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No. 85-

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ANTHONY J. SESTRIC,
Petitioner,

vs.

WILLIAM D. CLARK, JOSEPH H. GOLDENHERSH, THOMAS J. MORAN, HOWARD C. RYAN, SEMOUR F. SIMON, ROBERT C. UNDERWOOD, and DANIEL P. WARD, Judges of and Constituting the Supreme Court of the State of Illinois,

LEN YOUNG SMITH, DONALD H. FUNK, GEORGE B. LEE, FRANCIS D. MORRISSEY, and STUART DUHL, Members of and Constituting the State Board of Law Examiners of the State of Illinois,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

GIVEN TWO EQUALLY QUALIFIED CANDIDATES WHO MEET THE REQUIREMENTS FOR ADMISSION TO THE ILLINOIS BAR ON MOTION, MAY ILLINOIS DENY ONE ADMISSION SOLELY ON HIS RESIDENCE?

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OPINIONS BELOW

On March 2, 1984, the District Court granted Plaintiff's Motion for Summary Judgment, declaring the residency requirement of Illinois Supreme Court Rule 705 unconstitutional and suggested the resubmission of Plaintiff's application for admission to the Illinois Bar to the Defendants in light of its order. (A copy of this Opinion appears at page A-83) Four (4) days later,

sua sponte, the District Court vacated its March 2, 1984 order and requested the parties to brief the question of whether Plaintiff could be admitted to the Illinois Bar under Illinois Supreme Court Rule 704, which allows for admission to the Illinois Bar on the taking of the bar examination under certain restrictions. (A copy of this Order appears at page A-90.) On July 6, 1984, the District Court entered its order denying Plaintiff's Motion for Summary Judgment and granting Defendants' Motion for Summary Judgment. (A copy of this Order appears at page A-94.)

On June 18, 1985, the Court of Appeals for the Seventh Circuit affirmed the July 6, 1984 Order. (See page A-103.) On August 1, 1985, the Plaintiff-Appellant's Motion for Rehearing En Banc was denied. (See page A-121.)

JURISDICTIONAL STATEMENT

The judgment and mandate of the Court of Appeals for the Seventh Circuit was filed on June 18, 1985. The Petition for Rehearing was denied on August 1, 1985. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254(1), which provides:

> "Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods: (1) by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;..."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Privileges and Immunities Clause, Article IV, Section 2 of the United States Constitution, provides in pertinent part:

> "Citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

The Commerce Clause, Article I, Section 8 of the United States Constitution, provides, in pertinent part:

> "The Congress shall have power...to regulate commerce...among the several states..."

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois Supreme Court Rules 703, 703 as amended in September, 1984, 704 and 705 (Ill. Rev. Stat. Chapter 110A), provide:

> "RULE 703. EDUCATIONAL REQUIREMENTS.
>
> "Every applicant seeking admission to the bar on examination shall meet the following educational requirements:
>
> "(a) *Preliminary and College Work.* Each applicant shall have graduated from a four-year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois, or shall have become otherwise eligible for admission to such freshman class; and shall have satisfactorily completed at least 90 semester hours of acceptable college work, while in actual attendance at one or more colleges or universities approved by the Board of Law Examiners. In lieu of such preliminary or college

work, the board may, after due investigation, accept the satisfactory completion of the program or curriculum of a particular college or university. Proof of preliminary education may be made either by diploma showing graduation or by certificate that the applicant has become eligible for admission to such college or university, signed by the registrar thereof. Proof of the satisfactory completion of college work may be made by certificate, signed by the registrar of the college or university, that the applicant has satisfactorily completed the required college work. In lieu of the diploma and certificates described herein, the board may accept as proof of the preliminary and college work required herein, a certificate from an approved law school that the law school has on file proof of such preliminary and college work.

"(b) *Legal Education.* After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies and fulfilled the requirements for and received a first degree in law from a law school aproved by the American Bar Association. Each applicant shall make proof that he has completed such law study and received a degree, in such manner as the Board of Law Examiners shall require.

"(c) *Waiver.* The Board of Law Examiners in its discretion may waive the six-year requirement of paragraph (b) of this rule in the case of any applicant who meets the other requirements of this rule and who had been admitted to practice in a foreign jurisdiction, but who has not practiced there for the required period of time to gain admission in Illinois on a foreign license.

"AMENDED RULE 703. EDUCATIONAL REQUIREMENTS.

"Every applicant seeking admission to the bar on examination shall meet the following educational requirements:

(a) *Preliminary and College Work.* Each applicant shall have graduated from a four-year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois, or shall have become otherwise eligible for admission to such freshman class; and shall have satisfactorily completed at least 90 semester hours of acceptable college work, while in actual attendance at one or more colleges or universities approved by the Board of Law Examiners. In lieu of such preliminary or college work, the board may, after due investigation, accept the satisfactory completion of the program or curriculum of a particular college or university. Proof of preliminary education may be made either by diploma showing graduation or by certificate that the applicant has become eligible for admission to such college or university, signed by the registrar thereof. Proof of the satisfactory completion of college work may be made by certificate, signed by the registrar of the college or university, that the applicant has satisfactorily completed the required college work. In lieu of the diploma and certificates described herein, the board may accept as proof of the preliminary and college work required herein, a certificate from an approved law school that the law school has on file proof of such preliminary and college work.

"(b) *Legal Education.* After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant shall have pursued a course of law studies and fulfilled the requirements and received a frist degree in law from a law school approved by the

American Bar Association. Each applicant shall make proof that he has completed such law study and received a degree, in such manner as the Board of Law Examiners shall require.

"RULE 704. QUALIFICATION ON EXAMINATION.

"(a) Any person who meets the educational requirements set forth in Rule 703 may make application to the Board of Law Examiners for admission on examination.

"(b) Applications shall be in such form as the board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Rule 701, together with proof of his educational qualifications. In the event the proof shall be satisfactory to the board, the applicant shall be admitted to examination.

"(c) The Board of Law Examiners shall conduct separate examinations on academic qualifications and professional responsibility. At least two academic qualification examinations shall be conducted annually, one in February and the other in July, or at such other times as the board, in its discretion, may determine. At least three professional responsibility examinations shall be conducted annually, one in March, another in August, and another in October, or at such other time as the board, in its discretion, may determine.

"(d) The academic qualification examination shall be conducted under the supervision of the board, by uniform printed questions, and may be upon the following subjects: administrative law; agency; business organizations; commercial paper; conflict of laws; contracts; criminal law and procedure; domestic relations; equity jurisprudence, including trusts and mortgages; evidence; Federal and State

constitutional law; Federal jurisdiction and procedure; Federal Taxation; Illinois procedure; personal property; including sales and bailments; real property; suretyship; torts; and wills and administration of estates.

"(e) If an applicant fails to pass the first academic qualification examination, such applicant may be permitted to take successive examinations provided the board is furnished with satisfactory evidence of diligent study of the law since the prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the board or the Supreme Court. The board or Supreme Court, as a condition to the granting of permission to take another examination, may prescribe a further course of study.

"(f) The professional responsibility examination shall be conducted under the supervision of the board by uniform printed questions on the Illinois Code of Professional Responsibility. As an alternative to conducting its own examination, the board may designate the Multistate Professional Responsibility Examination of the National Conference of Bar Examiners as the Illinois professional responsibility examination. The board shall determine the score that constitutes a passing grade.

"(g) In the event the Board of Law Examiners shall find that such applicant meets the requirements of these rules, and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.

"RULE 705. QUALIFICATION ON FOREIGN LICENSE.

"Any person who has been admitted to practice in the highest court of law in any other State or territory of the

United States, or the District of Columbia may make application to the Board of Law Examiners for admission to the bar, without academic qualification examination, upon the following conditions:

"(a) The educational qualifications of the applicant are such as would entitle him to write the academic qualification examination in this State at the time he seeks admission, and he has resided and actively and continuously practiced law in such other jurisdiction for a period of at least five years of the seven years immediately prior to making the application.

"(b) In the event the jurisdiction from which the applicant seeks admission requires, as of the date of the filing of his application in this State, higher qualifications for admission in such jurisdiction on the basis of a foreign license than those set forth in this rule, the applicant shall be required to conform to such higher qualifications in his application for admission to the bar of Illinois. An applicant from any jurisdiction which does not grant reciprocal admission to attorneys licensed in Illinois on the basis of practice in this State shall not be entitled to admission under this rule.

"(c) Effective on and after July 1, 1981, the applicant has written and successfully passed the Illinois professional responsibility examination or, in the alternative, the applicant proves to the satisfaction of the board that he or she has written and scored a passing grade (as determined by the board) in the Multistate Professional Responsibility Examination of the National Conference of Bar Examiners within five years prior to the date of the application.

"(d) Applications shall be in such form as the Board of Law Examiners shall prescribe. Each applicant shall establish, to the satisfaction of the Board of Law Examiners, that he is an actual resident of the State of Il-

linois, that he is at least 21 years of age, of good moral character and general fitness to practice law, and that upon admission to the bar he will actively and continuously engage in the practice of law in this jurisdiction. The applicant shall furnish such proof of the practice requirements under paragraph (a) as may be required by the Board of Law Examiners. Each application shall be supported by a certificate of a judge of a court of general jurisdiction in the jurisdiction from which the applicant seeks admission certifying that the applicant has been admitted to, and that at the time of making said application he is a member in good standing of, the bar of that jurisdiction.

"(e) In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.

"(f) An applicant who has taken and failed to pass the academic qualification examination in Illinois shall not be eligible to apply for admission on foreign license."

STATEMENT OF CASE

The Petitioner, Anthony J. Sestric, is a resident of the State of Missouri and a member of the Missouri bar since 1965. On February 25, 1983, Mr. Sestric mailed and submitted his application for admission to the Bar of Illinois on foreign license, along with his check in the amount of $400.00. By March 18, 1983, Mr. Sestric had taken and passed the Multistate Professional Responsibility Examination. On March 24, 1983, Mr. Sestric received a letter from Mr. Funk, the Secretary of the State Board of Law Examiners for the State of Illinois, advising him that his application would not be processed or approved

because he was not then "an actual resident of the State of Illinois." When Mr. Sestric made a motion for waiver of Illinois Supreme Court Rule 705(d) and for admission to the Bar of Illinois on a foreign license, it was denied in May of 1983.

Anthony J. Sestric filed his original Complaint on May 25, 1983 with the United States District Court for the Central District of Illinois seeking an order that the residency requirement of Illinois Supreme Court Rule 705 was unlawful, unconstitutional, and void. Federal jurisdiction was noted under 28 U.S.C. §1331, §1332, and §2201. The issues presented in this case were first raised in the Motion for Summary Judgment filed October 19, 1983, where the Petitioner attacked the validity of Respondents' actions in denying him a license to practice law in Illinois on the basis that Illinois Supreme Court Rule 705 violated the Privileges and Immunities Clause, as well as the Equal Protection Clause and Commerce Clause.

The District Court, in its March 2, 1984 order, limited its analysis to Sestric's claim that Rule 705(d) violated the Privileges and Immunities Clause. It found that the Illinois residency requirement established by Rule 705(d) was unconstitutional and ordered the Petitioner to resubmit his application to the Board of Law Examiners in light of that opinion.

On March 6, 1984, *sua sponte,* the Court vacated the order of March 2, 1984. The Court said it was vacating the order because it had come to that Court's attention that the Petitioner, an out-of-state resident, might be admitted to the Illinois State Bar under Supreme Court Rule 704. Rule 704 deals with the requirements for becoming a member of the Illinois Bar by taking the Illinois Bar examination.

In response to the District Court's March 6, 1984 order, Respondent, Funk, filed an Affidavit which stated that, although Supreme Court Rule 703(b) requires that all who sit for the Illinois Bar examination do so within six (6) years of

graduation from a law school approved by the American Bar Association, waiver of this rule has been granted to forty-one (41) Illinois Bar applicants. Since Mr. Sestric had graduated from law school more than six (6) years ago, and was hence barred from taking the Illinois bar examination, this Affidavit represented to the Court that waiver of that Rule 703(b) had been granted to those similarly situated as Mr. Sestric. The District Court, relying on this Affidavit, found that the Petitioner could receive a waiver of Rule 703(b) and thus reversed its March 2, 1984 Order, which had found that the Privileges and Immunities Clause had been violated by Illinois Supreme Court Rule 705 (requirement for residency), and granted the Respondents' Motion for Summary Judgment on the basis that Rule 704 did not violate the Privileges and Immunities Clause, nor the constitutional right to travel, nor the Commerce Clause.

Mr. Sestric appealed this July 6, 1984 opinion to the United States Court of Appeals for the Seventh Circuit.

The Appellant's brief challenged the Affidavit of Defendant, Funk, on which the District Court relied when it found that nonresident Sestric could qualify to become a member of the Illinois Bar by examination under Rule 704, if granted a waiver such as Funk swore had been granted to others similarly situated to Mr. Sestric. Appellant's Brief made clear that under the unambiguous language of Rule 703, Mr. Sestric was *completely* ineligible to take the Illinois Bar examination under Rule 703: he had not only "received his first law degree" more than "6 years" ago, thus barred by Rule 703(b), but the facts were that he had also practiced actively and continuously "for more than the requisite years in the state that had granted him this license" and, therefore, was not qualified for a 703(c) waiver of 703(b). The District Court had thus premised its July 6, 1984 Summary Judgment Opinion on the Affidavit of Defendant, Funk, which has misrepresented that Plaintiff was eligible to take the bar exam under Rule 703. Three weeks after Mr. Sestric filed this Appellant's Brief, on September 14, 1984, the Illinois Supreme Court changed its Rule 703.

"Old" Rule 703(b) had barred Plaintiff from taking the Illinois bar examination, and "old" Rule 703(c) did not offer a waiver to someone similarly situated as the Plaintiff. Therefore, Rule 703(b) and Rule 703(c) were changed, so that the Defendants might have the District Court's Second Opinion affirmed. (July 6, 1984). The Second Opinion was entirely focused on the question of whether "requiring a foreign attorney to take the Bar exam before admission to the Bar violates a constitutional provision." It certainly would be more difficult to have an opinion affirmed which was quite evidently premised on what was a totally hypothetical fact situation, not at all analogous to the Plaintiff's situation.

The District Court, by its holding, implicitly found that new Rule 703 was constitutional and did not bar Plaintiff from becoming a member of the Illinois Bar because that rule did allow him to take the Illinois bar examination. The District Court, having been misled by Defendants, concluded that the Plaintiff could have taken the Illinois Bar examination. Having been so misled, the District Court dealt only with the constitutionality of a requirement of taking a bar examination. The District Court's attention was diverted from the issue of the unconstitutionality of Rule 705. Rule 705 relates to admission to the Bar without the need to take the Illinois Bar examination.

The United States Court of Appeals for the Seventh Circuit found that Mr. Sestric had failed to make a *prima facie* case under the Privileges and Immunities Clause. Further the Court found that the Illinois Bar had not violated the Commerce Clause or the Equal Protection Clause. The opinion of the Seventh Circuit was filed on June 18, 1985. The Petitioner's Petition for Rehearing was denied on August 1, 1985. The comment made by the Court at the time was that their slip opinion should then be amended so that lines 12 and 13 of Page 3 of the opinion read: "...his brief; so he is not subject to criticism for having changed his theory when he did." Evidently, it was not until the Petition for Rehearing that the Seventh Circuit realized

that it was not Mr. Sestric who had changed his theory, but rather the Respondents who had changed Rule 703 between the time when the Petitioner filed his Appellant Brief and the time he filed his Reply Brief.

REASONS FOR GRANTING THE WRIT

Introduction

Mr. Sestric lives 1.66 miles from the State of Illinois, and that is 1.66 miles too far to obtain a license to practice law in the State of Illinois under Illinois Supreme Court Rule 705. That rule is clearly a violation of the Privileges and Immunities Clause, as this Court found in *The Supreme Court of New Hampshire v. Catherine A. Piper,* 470 U.S. ____, 105 S.Ct. 1272 (1985), 84 L.Ed.2d 205. The Seventh Circuit, even in the wake of *Piper,* has clearly refused to follow the mandate of the Supreme Court in this area. This Court has continued to uphold the intent of the Privileges and Immunities Clause—to form this Nation into one economic union—by striking down as discriminatory and unconstitutioal those laws which give preference or preferential treatment to residents over nonresidents. *Supreme Court of New Hampshire v. Piper, supra; Metropolitan Life Insurance Company, et al. v. Ward, et al.,* 470 U.S. ____, 106 S.Ct. ____ (1985), 84 L.Ed.2d 751; *United Building and Construction Trades Council of Camden County v. Mayor and Council of the City of Camden, et al.,* 465 U.S. ____, 104 S.Ct. 1020 (1984), 79 L.Ed.2d 249; *In Re: Griffiths,* 413 U.S. 717 (1972).

This Court has made it clear that it is more concerned with the competency of members of the Bar, rather than their residency. This Court found that no reason advanced for discrimination against nonresident applicants was substantial, nor did discrimination practiced "bear a close relationship to its proferred objections." *Piper,* 84 L.Ed.2d at 215.

I. The District Court And The Seventh Circuit Decisions Are Contrary To The Decisions Of This Court And Of The Supreme Courts Of Massachusetts, New York, New Jersey, and Alaska.

The intent of the Privileges and Immunities Clause was noted by this Court as being clearly outlined by previous decisions.

> "(I)ntended to 'fuse into one Nation a collection of independent sovereign States.' *Toomer v. Witsell,* 334 U.S. 385, 395 (1948) . . . '(o)nly with respect to those 'privileges' and 'immunities' bearing on the vitality of the nation as a single entity' that a State must accord residents and nonresidents equal treatment." *Piper,* 84 L.Ed.2d at 210, citing *Baldwin v. Montana Fish & Game Commission,* 436 U.S. 371, 383 (1978).

The clear instruction of this Court is that the Privileges and Immunities Clause requires that lower courts recognize that:

> "(O)ne of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State." *Piper,* 84 L.Ed.2d at 211, citing *Toomer v. Witsell, supra* at 396. (See also *Ward v. Maryland,* 12 Wall. 418 [1871]).

The late Judge Waldo Ackerman, in his first District Court opinion (granting Petitioner's Motion for Summary Judgment on the basis that Rule 705 clearly violated the Privileges and Immunities Clause) recognized that the law in this area was clearly defined:

> "Having stated a few, but not all, of my reservations about the result of this opinion, I *must* follow the decisions of the Court of Appeal in the doctrine of *stare decisis.*" (Emphasis added.) March 2, 1984, Slip Opinion at page 6. A-88-89.

As the Judge noted, he felt bound by the law, as it then existed, without even the clear Supreme Court mandate of *Piper*, persuaded instead by the First Circuit's opinion in *Piper* and the earlier Supreme Court statements about the Privileges and Immunities Clause and the other states' courts' action regarding the unconstitutionality of residency requirements as well. In the wake of furor by the local bar over the March 2, 1984 decision, the late Judge Ackerman withdrew his decision, four (4) days after it was filed, and asked for further briefs.

What occurred subsequently was that the District Court was then supplied with misinformation. Defendant, Funk's, Affidavit implied that Petitioner, Sestric, could, under the rules as they then existed receive a waiver to take the Illinois Bar examination. However, the Supreme Court rules as they existed barred nonresidents who had graduated from law school more than six (6) years ago *and* been in practice more than five (5) of the last seven (7) years in the State which granted them license, from becoming a member of the Illinois Bar by either examination or admission by motion. When it was pointed out in Petitioner-Appellant's brief that the Judge's second opinion of July 6, 1984 was based on a factual situation which did not exist, the Respondents changed Rule 703 to conform to the District Court's understanding of the Rule 703 waiver provision, not as that provision actually existed at the time the July 6, 1984 opinion was written.

The Seventh Circuit, in considering this case, in its June 18, 1985 opinion, criticized the Petitioner for changing theories belatedly, ignoring that the court below had relied on Respondents' Affidavits which misrepresented the rules as they apply to the Petitioner. Respondents have chosen to blatantly ignore that residency requirement, whether it blocks an attorney from becoming a member of a state's bar by not allowing him to be sworn in after taking the bar examination (*Piper*) or by not allowing him to be sworn in by motion, when in both cases the attorney applicant met all of the other requirements, is un-

constitutional. Even after the rule change, Respondents still deny Petitioner a substantial right protected by the Privileges and Immunities Clause that it is not denying to residents.

The Seventh Circuit, in its June 18, 1985 opinion, made certain erroneous assumptions in reaching its decision. The first error was that this Court perceived a change in Appellant's position or theory in Appellant's Reply Brief from a challenge to Illinois Supreme Court Rule 703 to Rule 705. Factually, it was Appellees who changed their position, not Appellant. *Prior to September 14, 1984, there was no question but that Appellant was totally barred from practicing law in Illinois unless he became a resident of Illinois.* The issues before the District Court were decided under "old" Illinois Supreme Court Rules 703 and 705. Appellant's application for admission to practice in Illinois was denied under "old" Rules 703 and 705. It was not until *after* Appellant filed his initial brief on August 24, 1984 that Appellees tried to change the facts and justification for the discriminatory residency requirements by amending Rule 703 to allow all nonresidents to take the bar examination. This rule change did not alter the basic fact, however, that resident "continuous practice" attorneys are admitted to practice without taking the Illinois Bar Examination, while nonresident attorneys must take the examination.

The current Illinois rule requiring a physical residence in the State of Illinois is relatively new. Prior to January 1, 1967, Illinois did not require that an applicant for admission to the bar of Illinois on foreign license be an actual resident of the State. Chapter 110, Section 259.58 (Smith-Hurd Illinois Annotated Statutes [1936]). By 1956, the Illinois Supreme Court Rules did require that a foreign attorney at least state his intention to maintain an office in the State of Illinois for the practice of law. Chapter 110, Section 101.58 (Smith-Hurd, Illinois Annotated Statutes [1956 edition]). It was not until November, 1966 that the Illinois Court promulgated the current rule, effective January 1, 1967, by adding a requirement that admission to the

bar of Illinois on foreign license would be predicated upon both physical residence within the State of Illinois and the maintenance of an office for the practice of law in the State. The sole challenge and issue in this case is the constitutionality of the Illinois rule requiring residency in the State of Illinois before a license on reciprocity will be granted. Plaintiff's home residence is 1.66 miles from the border of the State of Illinois.

Residency has nothing to do with competency of lawyers. Historically, this is a recent development. If competition is good and economic protection is evil, then the Illinois Bar has no basis for ignoring the Supreme Court's clear mandate in *Piper* by protecting its own and promoting the evil of economic protectionism.

The Supreme Courts of Massachusetts, New York, New Jersey, and Alaska have all recognized the invalidity of their prior residency requirements.

Five states, Illinois, Indiana, Iowa, Massachusetts, and Michigan, required residence only of applicants for admission on motion. Of these five, the Supreme Court of Massachusetts, in considering its own rule, quite similar to the Illinois rule, recently determined that the rule violated the Privileges and Immunities Clause of the United States Constitution and could not be supported. The case of *In the Matter of Robert I. Jadd,* 461 N.E.2d 760 (Mass. S.Ct., 1984) is identical in all respects to the instant case. Other state supreme courts which have invalidated their residency requirements include: *In Re: Jordan,* 422 N.Y.S.2d 641 (N.Y., 1979); *In Re: The Matter of Jay Mark Sackman,* 448 A.2d 1014 (N.J., 1982); *Shelly v. Alaska Bar Association,* 620 P.2d 640 (Alaska, 1980); and *Noll v. Alaska Bar Association,* 649 P.2d 241 (Alaska, 1982).

II. Rank Provincialism Should Not Determine Who Is Admitted To A State's Bar, Rather Than Constitutional Standards.

The Seventh Circuit, Slip Opinion at A-113, makes the argument that residency is the equivalent of taking and passing the bar examination. This is an argument that already had been rejected by this Court in *Piper:* that an attorney 400 yards outside the New Hampshire border is not any less committed to learning and practicing New Hampshire law with competency than is a resident attorney 400 yards inside the border. Similarly, Sestric, at 1.66 miles from Illinois is committed to practice there competently. As this Court noted, the state could protect its interest in having competent lawyers through less restrictive means:

> "There is no evidence to support the state's claim that nonresidents might be less likely to keep abreast of local rules and procedures. Nor may we assume that a nonresident lawyer—any more than a resident—would disservice his clients by failing to familiarize himself with the rules." *Piper,* 84 L.Ed.2d at 214.

However, what the Court of Appeals would deem impossible for nonresident Sestric—to become familiar with the Illinois rules while residing at a distance of 1.66 miles from the Illinois border—is somehow an entirely different matter for resident lawyers of Illinois. The Seventh Circuit revealed its prejudice and provincialism by claiming that only Chicago lawyers have no difficulty with keeping track of other states' law without becoming physical residents of those states:

> "By becoming residents of Illinois, they place themselves in a situation where in all likelihood the bulk of their clients will be Illinois clients; the bulk of the law they practice will be Illinois law, and they will learn through doing. (Of course, this is not so in every case; some Illinois lawyers, especially in large firms in Chicago, have a federal or multistate practice, rather than an Illinois practice.)" Slip Opinion at 11, A-113.)

It is discriminatory to contend, as the Seventh Circuit contends, that lawyers in Chicago can and should competently handle a multistate practice, but lawyers in St. Louis, because they reside 1.66 miles from Illinois cannot possibly competently practice in Illinois.

Petitioner, Sestric, would not seek a license to practice Illinois law unless he was sure he could do it competently. Mr. Sestric was a law clerk to U. S. District Judge Harper in 1965-66. He has been practicing law since 1965 in Missouri. He has been President of the St. Louis Bar Association and active in both the Missouri Bar and the American Bar Association. He is currently a member of several committees of the American Bar Association, including a committee on minority affairs.

III. The Illinois Residency Requirement Violates The Equal Protection Clause Of The Fourteenth Amendment.

The crux of this case is that the Illinois rule, "creates an arbitrary distinction between experienced non-residents and residents by excusing the latter from the bar examination required of the former."

It was not until *after* Appellant filed his initial brief on August 24, 1984 that Appellees tried to change the facts and justification for the discriminatory residency requirements by amending Rule 703 to allow all nonresidents to take the bar examination. This rule change did not alter the basic fact, however, that resident "continuous practice" attorneys are admitted to practice without taking the Illinois Bar Examination, while nonresident attorneys must take the examination.

The Seventh Circuit claims that Rule 705 is available only to "new" Illinois residents. This assumption ignores the existence of multistate metropolitan areas such as St. Louis. The St. Louis SMSA includes counties in both Illinois and Missouri. A lifelong Illinois resident could take and pass the Missouri Bar Examination, practice in Missouri for five (5) years, and then be

admitted to practice in Illinois on motion. Thus Rule 705 discriminates in favor of residents, both lifelong and new, to exclude all nonresidents equally otherwise qualified.

Even the Seventh Circuit finds it must concede that its defense of its claim that the residency requirement does not violate the Equal Protection Clause is not a strong one. "Of course one can find—and readily, too—holes in Illinois' defense to the charge of undue favoritism to new residents." *Sestric,* at A- . In its discussion of why the equal protection attack on the validity of the residency requirement fails, the Seventh Circuit uses all of the now invalid arguments set forth by the Supreme Court of New Hampshire prior to *Piper* regarding residency requirements under the Privileges and Immunities Clause.

But for the same reasons that these arguments were found in *Piper* not to be a sufficient basis for discriminating against nonresidents, they are equally invalid as a defense against the residency requirement under the Equal Protection Clause analysis.

This Court has addressed bar licensing and equal protection. In *In Re: Griffiths, supra,* this Court held that the Connecticut Bar violated the Equal Protection Clause by banning the admission of resident aliens. Like the Petitioner, "no question is raised as to ... character or general fitness. Rather, the sole basis for disqualification is her *status* as a resident alien." *Griffiths, supra,* 413 at 722 (emphasis added). But for Petitioner's *status* as a resident of Missouri at a location 1.66 miles from the Illinois border, he could be a member of the Illinois Bar.

Moreover, this Court has pointed out that residency requirements would be subject to strict scrutiny and would be struck down unless the state could prove that the requirements were necessary to promote some compelling state interest. *Shapiro v. Thompson,* 394 U.S. 618 (1969); *Dunn v. Blumstein,* 405 U.S. 330 (1972); and *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974).

In one District Court case, *Keenan v. Board of Law Examiners of North Carolina,* 317 F.Supp. 1350 (E.D. N.C., 1970), that District Court concluded that residency requirements had no rational basis in determining Plaintiff's fitness to practice law:

> "...creates an unreasonable, arbitrary classification, ...and arbitrarily denies the Plaintiff an opportunity to practice their profession." 317 F.Supp. at 1351.

It is clear that this is an arbitrary classification. If residency was a necessity for continued familiarity with Illinois procedure and law, then there would be a durational residency requirement. There is not. If Mr. Sestric dislocated his family and moved his residence to Illinois and sought to be admitted on the motion, he could be admitted. Within hours of being granted that privilege, he could move back to Missouri and would not lose his right to practice law in Illinois. Even under less strict scrutiny, the pure arbitrariness of the classification is glaring. If residency is necessary for Missouri lawyers to proficiently practice Illinois law, then why is that residency requirement not of a durational nature?

IV. The Residency Requirement For Admission To The Illinois Bar Violates The Commerce Clause.

As *Hicklin v. Orbeck,* 437 U.S. 518, 523-34 discussed, both the Commerce Clause and the Privileges and Immunities Clause are directed at the same evil, economic protectionism, to the impairment of the Union. The Seventh Circuit conceded correctly that state laws, which are "obviously protectionist" should be "struck down without much hesitation," and that is what should have been done in the instant case. Rule 705 is, in its most basic form, nothing more than an attempt to protect its local attorneys from economic competition and so is subject to *per se* invalidation. *Pike v. Bruce Church,* 397 U S. 137 (1970). See also, *South Central Timber Development v. Wunnicke,* ____ U.S. ____, 104 S.Ct. 2237, 81 L.Ed.2d 71 (1984); *H. P.*

Hood and Sons v. DuMond, 336 U.S. 525 (1979); *Baldwin v. Seelig,* 294 U.S. 511 (1935); *Great Atlantic and Pacific Tea Company v. Cottrell,* 424 U.S. 366 (1976).

Scholars, who have studied the various state admission on motion rules, have concluded that the provisions are so unconnected with legitimate state interests in regulating the legal profession that they are explicable solely in terms of economic protectionism. 92 Harvard Law Review 1483, (1979), Note, A Constitutional Analysis of State Bar Residency Requirements and Regulating the Multistate Practice of Law, 50 Washington Law Review, 699, 709 (1975). Thus, if the test of *City of Philadelphia v. New Jersey,* 437 U.S. 617 (1978) is applied this residency requirement must fail, since:

> "Where simple economic protectionism is effected by state legislation, a virtual *per se* rule of invalidity has been erected..." 437 U.S. 617, at 624.

As the Federal District Court in *Strauss v. Alabama Bar,* 520 F.Supp. 173, 178 (N.D. Ala., 1981) concluded:

> "(T)he residency requirement constitutes a protectionistic trade barrier for the economic protection of local interests. (T)he only compelling state interest in the requirement of mere residency appears to be the creation of an oligopoly (for the benefit of its [lawyer] citizens)." *Strauss,* 520 F.Supp. at 179.

Residency does not equal competency, or even slight familiarity with local rules, whether or not it is a device to limit the amount of competition from other qualified and experienced lawyers, by limiting it to residents. As noted in 92 Harvard Law Review at Page 1486:

> "(A) nonresident attorney admitted in two jurisdictions could well specialize...and perform competently while a resident attorney who is only occasionally called to court could find that his mere residency had not enabled him to absorb a working knowledge of local procedure."

Respondents' seeming willingness to open legal competition only to nonresidents who take the Illinois Bar examination is constitutionally unsupportable. This pseudo-distinction has been rejected as a distinction without substance.

> "If we are willing to admit a qualified person on motion if he or she moves to Massachusetts, we have already concluded that passing a bar examination is not an essential means in assessing his or her knowledge of local law or any other qualification for admission to the bar. Thus the discrimination among persons seeking admission on motion is based solely on residence. We conclude that the right of a nonresident attorney to equal treatment with resident attorneys does not become less than fundamental or the discrimination justified, in a privileges and immunities sense, because Massachusetts affords him the option to remain a nonresident and achieve admission in the bar by examination." *In the Matter of Jadd,* 461 N.E.2d 760, 765 (Mass., 1984).

The effect of a Rule 705 residency requirement was noted succinctly by the New York Court of Appeals.

> "(G)iven two equally qualified candidates who . . . meet the . . . requirements for admission on motion . . ., the rule would deny one admission based solely on residence." *In the Matter of Gordon,* 48 N.Y.2d 266, 273 (1979).

Illinois Supreme Court Rule 705 contains ample safeguards for Illinois to insure that the lawyers seeking admission on continuous practice meet standards of ethical conduct, competence, and commitment to the practice of law. Illinois Supreme Court Rule 705(d). It is only the residency requirement that is unconstitutional.

The Seventh Circuit based its June 18, 1985 decision, in part, on the fact that Appellant can now take the Illinois Bar Examination without regard to residence. In effect, the Court is

saying that Illinois may grant a special privilege to some of its residents so long as it provides some alternative method for admission to nonresidents. (Appendix, page A-119.) This ignores the fact that Illinois has intentionally decided to create two methods of admission to practice. One method, available only to Illinois residents, is based on continuous practice and contains a presumption of competence. These Illinois residents are granted the privilege of practicing law without the requirement of taking the Illinois Bar Examination. The second method, available to all nonresidents and those residents who have not been engaged in continuous practice, requires the passing of the Illinois Bar Examination. The mere expression of the two paths to admission discloses the discrimination in favor of Illinois residents.

CONCLUSION

For all of these reasons, this Court should issue its Writ of Certiorari and reverse the decision of the Court of Appeals.

Respectfully submitted,

ANTHONY J. SESTRIC
1015 Locust Street, Suite 1110
St. Louis, Missouri 63101
(314) 241-8600

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Petition for Writ of Certiorari on Appeal from the United States Court of Appeals for the Seventh Circuit has been served upon the Respondents herein by depositing the same, postage prepaid, in the United States Mail, this 19th day of September, 1985, addressed to:

Ms. Patricia Rosen
Assistant Attorney General
188 West Randolph Street, Suite 2200
Chicago, Illinois 60601
Attorney for Defendants, Clark, Goldenhersh, Moran, Ryan, Simon, Underwood and Ward

and

Mr. Alfred B. LaBarre
c/o Ensel, Jones, Blanchard & LaBarre
Attorneys at Law
425 East Monroe Street, Suite 201
Springfield, Illinois 62701
Attorneys for Defendants, Smith, Funk, Lee, Morrissey and Duhl

ANTHONY J. SESTRIC

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

Cause No. 83-3134

Anthony J. Sestric,
Plaintiff,

vs.

William G. Clark, Joseph H. Goldenhersh,
Thomas J. Moran, Howard C. Ryan,
Semour F. Simon, Robert C. Underwood,
and Daniel P. Ward,
Judges of and Constituting the
Supreme Court of the State of
Illinois,

Len Young Smith, Donald H. Funk,
George B. Lee, Francis D. Morrissey,
and Stuart Duhl,
Members of and Constituting the State
Board of Law Examiners of the State
of Illinois,
Defendants.

AMENDED COMPLAINT

Comes now the Plaintiff, and for his amended cause of action against the Defendants, states as follows:

1. Plaintiff is a resident and citizen of the State of Missouri, and has been admitted to the practice of law in the highest court of law in the State of Missouri since 1965.

2. Defendants, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Semour F. Simon, Robert C. Underwood, and Daniel P. Ward, are the judges of and collectively constitute the Supreme Court of the State of Illinois, are citizens of the State of Illinois, and maintain their offices at

Springfield, Illinois, within the geographic boundaries of the Central District of Illinois.

3. Defendants, Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey, and Stuart Duhl, are the members of and collectively constitute the State Board of Law Examiners of the State of Illinois, and maintain the office of the Board at Springfield, Illinois, within the geographic boundaries of the Central District of Illinois.

4. This Court has jurisdiction to hear this cause under the provisions of 28 U.S.C. Sections 1331, 1332, and 2201.

5. Venue is proper in this Court under the provisions of 28 U.S.C. 1391(b).

6. The Defendants, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Semour F. Simon, Robert C. Underwood, and Daniel P. Ward, are vested with the authority to promulgate rules and to control the issuances of licenses to practice law in the State of Illinois. Pursuant to such authority, the Defendants and their predecessors in office have promulgated Supreme Court Rule 701 through and including 709. A copy of said rules is attached hereto, marked Exhibit A, and incorporated herein by reference.

7. Defendants, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Semour F. Simon, Robert C. Underwood, and Daniel P. Ward, have vested and assigned to Defendants, Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey, and Stuart Duhl, authority and responsibility for the issuance of licenses to practice law in the State of Illinois.

8. On February 25, 1983, Plaintiff submitted his Application for Admission to the Bar of Illinois on a foreign license to the State Board of Law Examiners of the State of Illinois, pursuant to the terms of Rule 705 of the Supreme Court of the State of Illinois. A copy of Plaintiff's application and filing fee is attach-

ed hereto, marked Exhibit B, and incorporated herein by reference.

9. On March 18, 1983, Plaintiff sat for, took, and passed the Multistate Professional Responsibility Examination as required by Rule 705(c) of the Supreme Court of the State of Illinois. A copy of Plaintiff's Report of Scores is attached hereto, marked Exhibit C, and incorporated herein by reference.

10. On March 22, 1983, Plaintiff's application was rejected on the sole basis that Plaintiff was not "an actual resident of the State of Illinois." A copy of the notification of rejection is attached hereto, marked Exhibit D, and incorporated herein by reference.

11. On April 18, 1983, Plaintiff filed, with the Defendants, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Semour F. Simon, Robert C. Underwood, and Daniel P. Ward, a Motion in the Alternative for Admission to the Bar, or for a Writ of Superintending Authority. A copy of said Motion is attached hereto, marked Exhibit E, and incorporated herein by reference.

12. On May 10, 1983, Defendants, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Semour F. Simon, Robert C. Underwood, and Daniel P. Ward, denied Plaintiff's Motion. A copy of the Defendants' notification is attached hereto, marked Exhibit F, and incorporated herein by reference.

13. Rule 705 of the Supreme Court of the State of Illinois as it requires Plaintiff to be an actual resident of the State of Illinois, is unconstitutional and contrary to Article I, Section 8, and Article IV, Section 2 of the United States Constitution, Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, and Chapter 13, Section 12 of the Illinois Statutes.

14. The Defendants have issued licenses to practice law in the State of Illinois under current and prior versions of Rules 701 through and including 709 and have allowed, permitted, and authorized attorneys, once licensed in Illinois, to terminate and abandon their Illinois residences without loss of their license to practice law in the State of Illinois.

WHEREFORE, Plaintiff prays an order and judgment of this Court against the Defendants:

a) Declaring Illinois Supreme Court Rule 705, as it requires Plaintiff to be an actual resident of the State of Illinois, unlawful, unconstitutional, and void.

b) Ordering the Defendants to accept and approve Plaintiff's application for admission to the Bar of Illinois.

c) Ordering the Defendants to issue to the Plaintiff a license to practice law in the State of Illinois.

d) Awarding the Plaintiff a reasonable attorney's fee.

e) Awarding to Plaintiff his costs expended in this cause.

f) Such other orders and judgments as to this Court shall seem meet, just, and appropriate.

/s/ ANTHONY J. SESTRIC
1015 Locust Street, Suite 1110
St. Louis, Missouri 63101
(314) 241-8600
Attorney Pro Se

Exhibit A

RULES GOVERNING ADMISSION TO THE BAR OF ILLINOIS

Adopted by Supreme Court
of the State of Illinois

STATE BOARD OF LAW EXAMINERS
OF THE STATE OF ILLINOIS

Len Young Smith
President
333 North Michigan, Chicago 60601

Donald H. Funk
Secretary-Treasurer
412 Ridgely Building
Springfield 62701

George B. Lee
Harrisburg 62946

Francis D. Morrissey
2700 Prudential Plaza, Chicago 60601

Stuart Duhl
One IBM Plaza, Chicago 60611

INSTRUCTIONS FOR APPLICANTS

Forms for admission to the bar are supplied by the Board of Law Examiners.

The dates of the examination and the last date for filing applications for a particular examination are available from the Secretary of the Board of Law Examiners. *Applications positively will not be accepted after the last date of filing.*

The filing fee of $200.00 must accompany an application for admission on foreign license; the filing fee of $75.00 must accompany an application for examination or re-examination.

For Further Information Address:

John B. Hendricks
Secretary-Treasurer
412 Ridgely Building
Springfield, Illinois

ADMISSION TO THE BAR

Rule 701. General Qualifications

(a) Persons may be admitted to practice law in this State by the Supreme Court if they are at least 21 years of age, of good moral character and general fitness to practice law, and have satisfactorily completed an examination on academic qualification and, effective July 1, 1981, also have satisfactorily completed an examination on professional responsibility conducted by the Board of Law Examiners or have been licensed to practice law in another jurisdiction, and, effective July 1, 1981, have satisfactorily completed a professional responsibility examination, subject, however, to the requirements contained in these rules.

(b) Any person admitted to practice law in this State is privileged to practice in every court in Illinois. No court shall by rule or by practice abridge or deny this privilege by requiring the retaining of local counsel or the maintaining of a local office for the service of notices.

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[1] Adopted by Supreme Court of Illinois, 11-26-66, effective January 1, 1967.

Amended October 2, 1972; January 30, 1975; October 16, 1977; May 15, 1980.

Rule 702. Board of Law Examiners

(a) The Board of Law Examiners shall consist of five members of the bar, appointed by the Supreme Court, and each shall serve a term of three years and until his successor is duly appointed and qualified.

(b) A majority of the board shall constitute a quorum. A president, secretary, and treasurer shall be annually elected. One member may hold the office of both secretary and treasurer.

(c) The members of the board and the officers thereof shall receive such salaries as the court may provide and such further sum for necessary disbursements as may be approved by the court, all payable out of moneys received from applicants for admission to the bar as fees for examination and admission.

(d) The board shall audit annually the accounts of its treasurer and shall report to the court at each November term a detailed statement of its finances, together with such recommendation as shall seem advisable. All fees paid to the board in excess of its expense shall be applied as the court may from time to time direct.

Rule 703. Educational Requirements

Every applicant seeking admission to the bar on examination shall meet the following educational requirements:

(a) *Preliminary and College Work.* Each applicant shall have graduated from a four-year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois, or shall have become otherwise eligible for admission to such freshman class; and shall have satisfactorily completed at least 90 semester hours of acceptable college work, while in actual attendance at one or more colleges or universities approved by the

Board of Law Examiners. In lieu of such preliminary or college work, the board may, after due investigation, accept the satisfactory completion of the program or curriculum of a particular college or university. Proof of preliminary education may be made either by diploma showing graduation or by certificate that the applicant has become eligible for admission to such college or university, signed by the registrar thereof. Proof of the satisfactory completion of college work may be made by certificate, signed by the registrar of the college or university, that the applicant has satisfactorily completed the required college work. In lieu of the diploma and certificates described herein, the board may accept as proof of the preliminary and college work required herein, a certificate from an approved law school that the law school has on file proof of such preliminary and college work.

(b) *Legal Education.* After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant within the period of six years immedicately prior to making application shall have pursued a course of law studies and fulfilled the requirements for and received a first degree in law from a law school approved by the American Bar Association. Each applicant shall make proof that he has completed such law study and received a degree, in such manner as the Board of Law Examiners shall require.

(c) *Waiver.* The Board of Law Examiners in its discretion may waive the six-year requirement of paragraph (b) of this rule in the case of any applicant who meets the other requirements of this rule and who had been admitted to practice in a foreign jurisdiction, but who has not practiced there for the required period of time to gain admission in Illinois on a foreign license.

Rule 704. Qualification on Examination

(a) Any person who meets the educational requirements set forth in Rule 703 may make application to the Board of Law Examiners for admission on examination.

(b) Applications shall be in such form as the board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Rule 701, together with proof of his educational qualifications. In the event the proof shall be satisfactory to the board, the applicant shall be admitted to examination.

(c) The Board of Law Examiners shall conduct separate examinations on academic qualification and professional responsibility. At least two academic qualification examinations shall be conducted annually, one in February and the other in July, or at such other times as the board, in its discretion, may determine. At least three professional responsibility examinations shall be conducted annually, one in March, another in August, and another in October, or at such other times as the board in its discretion, may determine.

(d) The academic qualification examination shall be conducted under the supervision of the board, by uniform printed questions, and may be upon the following subjects: administrative law; agency; business organizations; commercial paper; conflict of laws; contracts; criminal law and procedure; domestic relations; equity jurisprudence, including trusts and mortgages; evidence; Federal and State constitutional law; Federal jurisdiction and procedure; Federal taxation; Illinois procedure; personal property, including sales and bailments; real property; suretyship; torts; and wills and administration of estates.

(e) If an applicant fails to pass the first academic qualification examination, such applicant may be permitted to take successive examinations provided the board is furnished with satisfactory evidence of diligent study of the law since the prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the board or the Supreme Court. The board or Supreme Court, as a condition to the granting of permission to take another examination, may prescribe a further course of study.

(f) The professional responsibility examination shall be conducted under the supervision of the board by uniform printed questions on the Illinois Code of Professional Responsibility. As an alternative to conducting its own examination, the board may designate the Multistate Professional Responsibility Examination of the National Conference of Bar Examiners as the Illinois professional responsibility examination. The board shall determine the score that constitutes a passing grade.

(g) In the event the Board of Law Examiners shall find that such applicant meets the requirements of these rules, and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.

Rule 705. Qualification on Foreign License

Any person who has been admitted to practice in the highest court of law in any other State or territory of the United States or the District of Columbia may make application to the Board of Law Examiners for admission to the bar, without academic qualification examination, upon the following conditions:

(a) The educational qualifications of the applicant are such as would entitle him to write the academic qualification examination in this State at the time he seeks admission, and he has resided and actively and continuously practiced law in such other jurisdiction for a period of at least five years of the seven years immediately prior to making the application.

(b) In the event the jurisdiction from which the applicant seeks admission requires, as of the date of the filing of his application in this State, higher qualifications for admission in such jurisdiction on the basis of a foreign license than those set forth in this rule, the applicant shall be required to conform to such higher qualifications in his application for admission to the bar of Illinois. An applicant from any jurisdiction which does

not grant reciprocal admission to attorneys licensed in Illinois on the basis of practice in this State shall not be entitled to admission under this rule.

(c) Effective on and after July 1, 1981, the applicant has written and successfully passed the Illinois professional responsibility examination or, in the alternative, the applicant proves to the satisfaction of the board that he or she has written and scored a passing grade (as determined by the board) in the Multistate Professional Responsibility Examination of the National Conference of Bar Examiners within five years prior to the date of the application.

(d) Applications shall be in such form as the Board of Law Examiners shall prescribe. Each applicant shall establish, to the satisfaction of the Board of Law Examiners, that he is an actual resident of the State of Illinois, that he is at least 21 years of age, of good moral character and general fitness to practice law, and that upon admission to the bar he will actively and continuously engage in the practice of law in this jurisdiction. The applicant shall furnish such proof of the practice requirements under paragraph (a) as may be required by the Board of Law Examiners. Each application shall be supported by a certificate of a judge of a court of general jurisdiction in the jurisdiction from which the applicant seeks admission certifying that the applicant has been admitted to, and that at the time of making said application he is a member in good standing of, the bar of that jurisdiction.

(e) In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.

(f) An applicant who has taken and failed to pass the academic qualification examination in Illinois shall not be eligible to apply for admission on foreign license.

Rule 706. Fees of Applicants

(a) Each applicant for admission to the bar on examination shall pay in advance a fee of $75 and a similar fee for each subsequent examination. If the applicant does not appear for an examination, the fee shall not be refunded unless good cause is shown for failure to appear.

(b) Each applicant for admission to the bar on a foreign license shall pay in advance a fee of $200.

(c) All fees shall be paid to the treasurer of the Board of Law Examiners to be held by him subject to the order of the court.

Rule 707. Foreign Attorneys in Isolated Cases

Anything in these rules to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may in the discretion of any court of this State be permitted to participate before the court in the trial or argument of any particular cause in which for the time being, he is employed.

Rule 708. Committee on Character and Fitness

(a) At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the judicial districts of this State, consisting of not less than three members of the bar. The members of the Board of Law Examiners shall be *ex-officio* members of the committees.

(b) Before admission to the bar, each applicant shall be passed upon by the committee in his district as to his good moral character and general fitness to practice law. He shall furnish the committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history. Each applicant shall appear before the committee of his district or some member thereof and shall furnish the committee such evidence

of his good moral character and general fitness to practice law as in the opinion of the committee would justify his admission to the bar.

(c) If the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar. If the committee is not of that opinion, it shall file with the Board of Law Examiners a statement that it cannot so certify, together with a report of its findings and conclusions.

(d) An applicant who has availed himself of his full hearing rights before the Committee on Character and Fitness and who deems himself aggrieved by the determination of the committee may, on notice to the committee, petition the Supreme Court for relief.

Rule 709. Power to Make Rules, Conduct Investigations, and Subpoena Witnesses

(a) Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have power to make, adopt, and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

(b) The Board of Law Examiners and the Committee on Character and Fitness for each judicial district are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the bar, examinations given by or under the supervision of the Board of Law Examiners, and the good moral character and general fitness to practice law of applicants for admission. They may call to their assistance in such inquiries other members of the bar and make all necessary rules

and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses. The hearings before the commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the commissioners, the clerk of the Supreme Court shall issue writs of subpoena *ad testificandum,* writs of subpoena *duces tecum,* or *dedimus potestatem* to take depositions. Witnesses shall be sworn by a commissioner or any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the court, if requested. The commissioners shall report to the Supreme Court the failure or refusal of any person to attend and testify in response to a subpoena.

Exhibit B

STATE BOARD OF LAW EXAMINERS
STATE OF ILLINOIS

APPLICATION FOR ADMISSION TO THE BAR
UPON FOREIGN LICENSE

1. Name Anthony J. Sestric

2. Residence 3967 Holly Hills Boulevard, St. Louis, Missouri 63116

3. Date of Birth June 27, 1940 *Place of Birth* Richmond Heights, Missouri

4. Are you a citizen of the United States Yes *Social Security Number* 490-36-6276

5. Give the name of the state or foreign jurisdiction in which you are now licensed Missouri

6. Date of foreign license September 4, 1965

7. Give the period or periods by dates during which you actively practiced law in such foreign jurisdiction I have been continuously engaged in the private practice of law in Missouri since April 1, 1966 to the present. From July 1, 1965 to April 1, 1966, I was employed as a Law Clerk for the Hon. Roy W. Harper, Chief Judge of the United States District Court for the Eastern District of Missouri.

8. Give the period or periods by dates during which you resided in such foreign jurisdiction I have continously resided in Missouri since June 27, 1940, except during the school terms of 1958 to 1962 when I was attending Georgetown University in Washington, D. C. I returned to Missouri during the summer months.

9. Were you admitted upon examination, law school diploma, or on motion. I was admitted upon examination

10. Give each residence address you have had for the past ten years with the dates you lived at each address. 3967 Holly Hills Boulevard, St. Louis, Missouri, from approximately June 1, 1974 to the present.

6533 Tholozan Avenue, St. Louis, Missouri from approximately November 26, 1968 to approximately June 1, 1974.

11. Give each office address you have had for the past ten years, if you have practiced so long, with the dates you were at each address. 915 Olive Street, St. Louis, Missouri - 1968 to July 1, 1977.
120 South Central Avenue, Clayton, Missouri - July 1, 1977 to August 1, 1978.
1015 Locust Street, St. Louis, Missouri - August 1, 1978 to present.

Dated this 17th day
of February, A. D. 1983

Signature Anthony J. Sestric

Address 1015 Locust Street, Suite 601
St. Louis, Missouri 63101

Telephone Number (314) 241-8600

AUTHORIZATION AND RELEASE

I, Anthony J. Sestric, born at Richmond Heights, Missouri on June 27, 1940, having filed an application for admission to the bar of Illinois, do hereby consent to have an investigation made by or on behalf of the State Board of Law Examiners, State of Illinois, and/or any of the several Character and Fitness Committees of the State of Illinois as to my moral character, reputation and fitness for the practice of law. I agree to give any further information which may be required in reference to my past record. I understand that if there is an adverse determination by a Character and Fitness Committee, the contents of the report will be disclosed to me, otherwise, will not be entitled to disclosure of such contents and the same will be privileged.

I also authorize and request every person, firm, company, corporation, governmental agency, court association or institution having control of any documents, records and other information pertaining to me, to furnish to the State Board of Law Examiners for subsequent use by the Character and Fitness Committees or directly to any Character and Fitness Committee, any such information, including documents, records, bar association files regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, and to permit the Board of Law Examiner and/or a Character and Fitness Committee, or any of their agents or representatives, to inspect and make copies of such documents, records and other information.

I authorize the State Board of Law Examiners and/or any Character and Fitness Committee to obtain any information from my official record on file with Local Board Number _____ of the Selective Service System, located in the City of St. Louis, State of Missouri, and further authorize the Department of the Army, Navy or Air Force to furnish the State Board of Law Examiners and/or any Character and Fitness Committee, the record of each period of my service therein and to fur-

nish my service record for each period; and do hereby consent to and authorize the release of such information by the Selective Service System and Department of the Army, Navy, or Air Force. My serial number was: none.

As an inducement to the State Board of Law Examiners and/or any Character and Fitness Committee to investigate and reach a determination respecting my moral character, reputation and fitness for the practice of law, I hereby release, discharge and exonerate the State Board of Law Examiners and the Character and Fitness Committees, their agents and representatives, from any and all liability or every nature and kind arising out of any such investigation or out of the furnishing, inspection or use of such documents, records, and other information.

/s/ Anthony J. Sestric

State of MISSOURI,

SS:

CITY OF ST. LOUIS

Subscribed and sworn to before me this 17th day of February A.D., 1983.

Nancy K. Troutman
Notary Public

Nancy K. Troutman
Notary Public, State of Missouri
My Commission Expires Aug. 22, 1986
CITY OF ST. LOUIS

BEFORE THE CHARACTER AND FITNESS COMMITTEE

OF THE SUPREME COURT OF ILLINOIS

for the _____ Judicial District

State of Illinois, _____ County

In the matter of the application of Anthony J. Sestric

for admission to the Bar of Illinois on examination ( )

foreign license (X)

QUESTIONAIRE AND STATEMENT OF APPLICANT

Instructions — (follow carefully)

Answers to the following questions must be typed or neatly printed and verified by the affidavit at the end of the questionaire. *Your answers must be complete and legible.* Where addresses are called for (e.g. employment and character references), you must give current complete street addresses, including city, state and zip code and P.O. Box Rural Route where applicable. If there will be a change in the place where you are now receiving mail, indicate your forwarding address and the date when such address is to be used. Address problems and incomplete or inadequate responses to questions will delay the processing of your questionaire. Follow all instructions carefully.

Applicant must answer fully, truthfully and accurately all questions and each subdivision thereof. Any omissions or inaccuracies may result in rejection. Where yes or no clearly suffices employ that form of answer, but in case of doubt, amplify.

If the space for any answer be insufficient, complete your answer on a separate attached sheet specifying the number of the question and bearing your signature.

Applicants who have previously been licensed to practice law in any other jurisdiction must also answer the Supplemental Questionaire.

QUESTIONAIRE

1. (a) Give your full name Anthony James Sestric Age 42

Birthplace St. Mary's Hospital
Richmond Heights, Missouri

Date of Birth June 27, 1940

If born in a foreign country, state at what age you came to the United States, and whether you are now a citizen of the United States.

Present residence address—zip code
3967 Holly Hills Boulevard
St. Louis, Missouri 63116

Length of residence at such address
Approximately 8½ years.

Mailing address, if different from above
1015 Locust Street, Suite 601
St. Louis, Missouri 63101

Forwarding address, if any
(If you anticipate/know, indicate effective date)
None

How long have you resided in Illinois?
I do not currently reside in Illinois.

Present office address, if any
1015 Locust Street, Suite 601
St. Louis, Missouri 63101

Where do you intend to practice?
Missouri and Illinois

Social Security number 490-36-6276

If your questionaire is being examined by the Committee on Character and Fitness for the First Judicial District, all changes in address should be referred to that Committee's

office at 29 South LaSalle, Suite 1020, Chicago, Illinois 60603 and, in addition, to the State Board of Law Examiners, 412 Ridgely Bank Building, Springfield, Illinois 62701.

(b) State every residence you have had in the United States or elsewhere for the past 10 years, with exact address of each and the month and year of the beginning and ending of each such residence.

November, 1968 to June, 1974 6533 Tholozan St. Louis, Missouri 63109

June, 1974 to present 3967 Holly Hills Blvd. St. Louis, Missouri 63116

(c) Have you ever been known by any given name or surname other than those give above? No

State other name with dates, facts and reasons for any change in name.

(d) Are you married or single? Married

Have you ever been married? Yes

If married, when and to whom?

Carol F. Bowman
November 24, 1966

If a marriage has been terminated by divorce, separate maintenance or annulment proceedings, give title and general number of suit, name of court, date of decree, grounds alleged in complaint, by whom obtained, and names of all attorneys in the case.

Not Applicable

2. Give the following information about your parents:

Name:		Present residence (or if deceased so indicate):
Father	Anton Sestric	5140 Peyton Place, St. Louis, Missouri 63128

Mother Marie Gasparovic 5140 Peyton Place,
St. Louis, Missouri 63128

3. If you are a high school graduate, give name of high school and date of graduation.

Name of School St. Louis University High School

City or town, State St. Louis, Missouri

Month and year of beginning and ending of attendance.
September, 1954 to May, 1958

Date of Graduation May 31, 1958

4. Give the following information as to all colleges attended: (Omit law schools in this answer.)

Name of college; Where located; Day, evening, extension or summer attendance; Period of attendance; Degrees received and dates

Georgetown University; Washington, D.C.; Day;
September, 1958 to January, 1962; None

St. Louis University; St. Louis, MO; Summer;
June to August, 1961; None

St. Louis, University; St. Louis, MO; Day;
January to May, 1962; None

If degree was not received state reason: Withdrew from college because of illness. Because I had over 120 hours of college credits and could start law school, I decided not to return for an undergraduate degree, but to begin law school.

5. Give the following information as to all law schools attended:

Name of law school; Where located; Day, evening or summer attendance; Period of attendance; Degrees received and dates

University of Missouri - Columbia; Columbia, MO; day
September, 1962 to June, 1965; J.D., June, 1965

If degree was not received state reason:

6. Have you ever been dropped, suspended, placed on probation, disciplined, or expelled from any school, college, law school or other similar institution? NO Were you accused of any dishonesty in connection therewith? NO If your answer to either question is yes, state fully the cause and the circumstances.

7. Do you now work or have you ever worked in a law office, or have you otherwise been employed by or as a lawyer? Yes If your answer is yes, give a full list of such offices and employment, including address and zip code, specify the date(s) (month and year) of the period of each such employment and person responsible for your actions and conduct and the person for whom you worked if different from the foregoing person or persons. Describe in detail the nature of your work. Do not include the foregoing under employments to be listed in question 10.

   1) Law Clerk, Missouri - Pacific Railroad, 210 North 13th Street, St. Louis, Missouri 63103, under the supervision of Mr. Mark M. Hennelly, General Counsel. Nature of work was legal research in areas of general corporate, Interstate Commerce Commission; summer 1963 and 1964.

   2) Law Clerk for U.S. District Court, Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri 63102, under supervision of Chief Judge Roy W. Harper, doing legal research, preparation of pre-trial and post-trial memorandums and decisions from June, 1965 to April, 1966.

   3) Special Assistant Missouri Attorney General, State Supreme Court Building, Jefferson City, Missouri 65101, under supervision of then Missouri Attorney General Norman Anderson, representing the State of Missouri in criminal appeals, 1968.

   4) Partner in general private practice of law in firms under names of:

a) Sestric & Sestric, 705 Olive Street, St. Louis, Missouri 63101; 1966-1967.

b) Sestric, Sestric, Sweet & McGhee and Sestric, McGhee & Miller, 915 Olive Street, St. Louis, Missouri 63101; 1967-1977.

c) Fordyce & Mayne, 120 South Central Avenue, St. Louis, Missouri 63105; July, 1977 through August, 1978.

5) 1015 Locust Street, St. Louis, Missouri 63101, August, 1978 to present.

6) Hearing Officer, St. Louis Metropolitan Police Department, 1200 Clark Avenue, St. Louis, Missouri 63103, under supervision of entire Board of Police Commissioners, from 1976-1978, conducting administrative hearings on police discipline proceedings.

8. Have you ever applied for admission to practice as an attorney or counselor in any court in any jurisdiction, state or country? YES If so, specify when and where, and give the result of every such application, (i.e., accepted, rejected (give full details), awaiting results, etc.).

Missouri State Courts, accepted September 4, 1965.

U.S. District Court of Appeals, accepted January 7, 1966.

U.S. Circuit Court of Appeals, accepted September 23, 1965.

U.S. Tax Court, accepted July 30, 1973.

U.S. Supreme Court, accepted May 18, 1970.

NOTE: If you have previously been licensed to practice law in any other jurisdiction, procure and fill out the Supplemental Questionaire.

9. Have you previously unsuccessfully applied for admission to the bar of the State of Illinois either upon examination or upon license issued in another state or country? NO. If so, state when and why you were not then admitted.

10. (a) Give the following information for each employment or occupation (other than those disclosed in answer to question 7) since you were 16 years of age (include summer and part-time jobs): (a) period (month and year); (b) nature of the business; (c) position which you held; (d) employer/company name; (e) name of your immediate supervisor; (f) complete office address of your employer, including zip code (include both the address where employment records are most likely to be kept as well as the branch or division where you were employed); and (f) reasons for leaving such employment. List each occupation separately, giving all of the available information under each of the foregoing categories. Note that failure to fully supply the foregoing information in a legible manner for each occupation or employment can delay the processing of this questionnaire.

    1) St. Louis Board of Education, summers of 1957-1959; assistant playground supervisor. 714 Locust Street, St. Louis, Missouri 63101. Immediate supervisor unrecalled.

    2) St. Louis Housing Authority, summer of 1960; ground maintenance employee, 4100 Lindell Boulevard, St. Louis, Missouri 63108. Immediate supervisor deceased, Charles Kennedy.

    3) Advertiser's Display & Exhibits, Inc., summer of 1961; products research assistant. 1832 Washington, St. Louis, Missouri 63103. Immediate supervisor deceased, John Doran.

    In each instance, employment terminated with end of summer and my return to school.

(b) Were you ever required to furnish a bond in connection with any office or employment? Not to my knowledge. If so, specify name of employer, nature and period of employment, amount of bond, name of bonding company

or other surety, and whether any one ever made a claim under your bond or sought to cancel it. (State facts fully).

(c) Were you ever accused by any employer, superior, or associate of dishonesty in connection with any employment or occupation? NO. If answer is yes, state facts fully.

(d) Have you been discharged by any employer? NO. If so, state by whom, the cause and the circumstances.

(e) Have you ever applied for or taken any examination for any license (other than attorney at law), position or office, the procurement of which required proof of good character? NO. If answer is yes, specify all applications, including applications for reinstatement and withdrawn applications, all examinations, whether successful or not, and the date of each, the name and address of the authority to whom the application was addressed or by whom such examination was given and the result of each, with any reasons given for each rejection.

(f) Have you ever applied for or held a license, other than as attorney at law, or official position which required proof of good character? NO. If so, state the nature thereof, date granted, denied or held, period covered and name and address of authority issuing license or making appointment to official position.

11. (a) Have you ever been a party (either plaintiff or defendant) to or otherwise involved in any action or legal proceeding, either civil or criminal or quasi criminal, including any proceedings in a juvenile court? YES. (Do not repeat answer to question 1(d)).

(b) Have you ever been charged with crime, or arrested? No.

(c) Have you ever been charged with violation of any motor vehicle law including any parking or other traffic violations? Yes.

(d) Have you ever been summoned for violation of any other statute or ordinance? No.

(e) Have you ever been involved in a bankruptcy proceeding? No.

(f) Have you ever been adjudged incompetent or insane by any court? No.

(g) Have you ever received a grant of immunity from any state or federal court? No.

If your answer is Yes as to any of the foregoing subparagraphs, state fully all of the facts, including dates and results (e.g. fine, sentence, probation, parole, pending, expunged, etc.), designating by letter the division referred to and give the complete name of each case with the number, the Court and the State and City where the matter was heard and the names of all attorneys for the prosecution, or for the plaintiff's and defendant's. Your answer must fully apprise the Committee of all relevant issues and facts, except minor traffic and parking violations which may be generally described.

11 (a) In two instances, I was the Plaintiff suing to recover attorney's fees. In both cases, a settlement was reached without trial.

In one instance, as a trustee for a bankrupt, suit was filed in my name against a creditor of the bankrupt. A settlement was reached without trial.

While I served on a Municipal Air Pollution Review Board, I was named as a Defendant in a number of administrative appeals from our decisions. The matters were handled by the City Counselor's Office, and I do not know the results of the appeals.

11 (c) In my 26 years as a licensed driver, I believe I have received two tickets for violation of a municipal stop

sign. I have on occasion received parking tickets for expired parking meters. I do not recall or have any information or record of any other traffic offense.

12. Are there any unsatisfied judgments against you? NO. If your answer is yes, give the name of the court in which entered, name of creditor in whose favor the judgment was entered, and the amount and date of the judgment.

13. Give the names, occupations and full addresses, including zip code, of at least five persons other than employers to whom you refer as to your character. (These persons must not be related to you by blood, adoption or marriage and should have known you for at least five years. The acquaintance with you should be more than casual. The persons herein listed must not be the same persons used for the affidavits provided with your application for permission to write the Bar.)

Mr. Thomas W. Taylor; 6446 Devonshire, St. Louis, MO 63109; Accountant; Personal friendship since 1942.

Dr. Thomas Phillips; 4024 Chaparral Drive, Roanoke, VA 24018; Physician; Personal friendship since 1954.

Mr. C. John Pleban; 100 North Broadway, St. Louis, MO 63102; Attorney; Professional friendship since 1976.

Mr. John H. Schweitzer; 3953 Holly Hills Blvd., St. Louis, MO 63116; Vice-President, Mercantile Bank; Neighbor since 1974.

Rev. John J. Campbell, S.J.; 4970 Oakland Avenue, St. Louis, MO 63110; Priest; Personal friendship since 1954.

14. (a) Have you read and do you understand all provisions of the Illinois Code of Professional Responsibility? YES.

(b) Has your conduct ever been questioned with reference to the unauthorized practice of law? NO. Have you ever been employed or otherwise connected with any person, firm or corporation whose conduct was questioned on the subject of unauthorized practice of law while you were so employed or connected? NO. If your answer is yes to any part of this question, state the matter fully, giving the name and current address and telephone number of the person, firm or corporation whose conduct was questioned, the nature of the unauthorized practice, if you know, and the dates and results of the inquiry.

15. (a) If you have ever been in military service, state period of service and nature of discharge.

Not applicable.

(b) If you have ever held any public office either by election or by appointment, state the nature thereof and when and where.

Member, Air Pollution Review Board, City of St. Louis, 1966-1973.

Provisional Municipal Judge, City of St. Louis, 1968.

Member, St. Louis City Airport Commission, 1975-76.

16. Have you ever been suspended, disqualified or otherwise disciplined as a member of any profession, or in military service? NO. Have you ever been removed from any office, public or private or have any charges been made or filed or proceedings instituted against you? NO. If your answer to either question is yes, state facts fully.

17. Do you now and will you hereafter support the Constitution of the United States and the Constitution of the State of Illinois? YES.

Applicant understands that the execution of this document constitutes a representation that Applicant will immediately disclose to the Character and Fitness Committee circumstances and events occurring after the date of the submission of this document which may have any substantive bearing on Applicant's character and fitness.

Applicant must sign in the two places provided below following the words "Signature of Applicant." In addition, this document must be notarized, and the notary shall include the date of such notarization with his or her notary seal and/or identification and commission expiration date. Proper execution is necessary to render this questionnaire valid.

Signature of Applicant /s/ Anthony J. Sestric

Telephone: Office (314) 241-8600 (present)
(Present/anticipated) (618) 372-4111 (anticipated)

Telephone: Home (314) 832-6239

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

Anthony J. Sestric being duly sworn says: I have read the foregoing questions and have answered them fully and frankly. The answers subscribed by me are true of my own knowledge.

Signature of Applicant /s/ Anthony J. Sestric

Subscribed and sworn to before me this 17th day of February 1983

/s/ Nancy K. Troutman (Seal)
Notary Public

My Commission expires: Aug. 22, 1986

SUPPLEMENTAL QUESTIONNAIRE

To Be Answered By Applicants For Admission
To The Illinois Bar Who Have Previously
Been Licensed To Practice Law In
Another Jurisdiction

21. Name of applicant. Anthony J. Sestric

22. Are you a resident of Illinois, and if so, when did you become such? No

23. Name all courts and administrative agencies before which you have been admitted to practice, with dates of admission.

Missouri Supreme Court	September 4, 1965
U.S. District Court, Eastern District of Missouri	January 7, 1966
U.S. Court of Appeals for 8th Circuit	September 23, 1965
U.S. Tax Court	July 30, 1973
U.S. Supreme Court	May 18, 1970

24. List every application made by you (whether or not voluntarily withdrawn by you) for admission to practice before any court or administrative agency, except those covered by your answer to question 23, and give in detail reasons why such application was not granted or was withdrawn.

None

25. Make a complete statement of your practice of the law since first being admitted to practice in any jurisdiction. Include temporary or part-time work. State as to each employment or period of private practice:

(a) The periods during which you were employed as an attorney or engaged in private practice.

From July 1, 1965 to April 1, 1966 I was employed as a law clerk for the Hon. Roy W. Harper, Chief Judge for the U.S. District Court for the Eastern District of Missouri. Since April 1, 1966 I have been engaged in private practice..

(b) The address of the offices or places at which you were so employed or engaged and the names and present addresses of all such former employers, partners or associates, if any. (*If room number of office is known, this should be given.)*

Roy W. Harper, U.S. District Court, Eastern District of Missouri, U. S. Courthouse, 1114 Market Street, St. Louis, Missouri 63103.

Philip M. Sestric, 473 North Kirkwood Road, St. Louis, Missouri 63122. We practiced together at 705 Olive Street and 915 Olive Street, St. Louis, Missouri 63101.

Edgar T. Farmer, c/o Fordyce & Mayne, 120 South Central Avenue, St. Louis.

(c) The nature and extent of your duties or practice.

Since entering private practice, my practice has been of a general nature, excluding patent, trademark, and securities work. I have engaged in civil and criminal litigation, tax and estate planning, corporate, real estate, adoption, and various administrative areas.

(d) The reason for the termination of each employment or period of private practice.

My association with my uncle ended when I was asked to join Fordyce & Mayne. I left Fordyce & Mayne to reopen my office in downtown St. Louis.

(e) If you have practiced in more than one locality, give the reasons which impelled you to make each change.

All of my practice has been in St. Louis, Missouri area.

26. (a) State your reasons for seeking admission to the bar of Illinois.

Various clients and family members have expanded Illinois contacts. In order to properly serve them, it is becoming necessary that I be a licensed Illinois attorney.

(b) If you have left the foreign jurisdiction in which you were last engaged in the practice of law, state the circumstances leading you to do so.

Not applicable.

27. (a) Do you expect to engage in the active practice of law in Illinois in an office of your own, and if so, at what address? YES.

402 North Maple
Brighton, Illinois 62012

(b) If with other attorneys, give their names and office addresses.

The other attorney at the office is:

Mary M. Albert
401 North Maple
Brighton, Illinois 62012

28. If you do not expect to engage in the active practice of law, what calling or employment do you expect to pursue?

Not Applicable.

With whom?

At what address?

29. Of what bar associations have you been a member? Give dates and duration of membership.

Missouri Bar — 1965 to present.

American Bar Association — 1965 to present.

American Judicature Society — 1973 to present.

Bar Association of Metropolitan St. Louis — 1965 to present.

Lawyers Association of St. Louis — 1975 to present.

Mound City Bar Association — 1982 to present.

30. Give the name of the bar association existing in each of the localities where you have practiced, and, if possible, also the names of the president and secretary of each such association.

Bar Association of Metropolitan St. Louis, One Mercantile Center, St. Louis, Missouri 63101.

Lawyers Association of St. Louis, 1221 Locust Street, St. Louis, Missouri 63103

Mound City Bar Association, 408 Olive Street, Suite 715, St. Louis, Missouri 63102.

Women's Lawyers Association, 1215 Pine Street, St. Louis, Missouri 63103.

St. Louis County Bar Association, 120 South Central, Suite 540, St. Louis, Missouri 63105

31. Give as references the names and addresses of at least one judge of a court of record and of two lawyers in each locality in which you have practiced.

Hon. Bernard C. Drumm, St. Louis County Courthouse, 7900 Carondelet, St. Louis, Missouri 63105.

Mr. David S. Hemenway, Assistant General Counsel, Peabody Coal Company, 301 North Memorial Drive, St. Louis, Missouri 63102.

Mr. Maury B. Poscover, 100 North Broadway, Suite 1800, St. Louis, Missouri 63102.

32. (a) Has your professional conduct ever been called into question by a client, a court, a bar association, another lawyer or any other person?

Not to my knowledge.

(b) Have you ever been reprimanded, censured, disciplined, suspended, or disbarred, as an attorney or counselor at law or as a practitioner before any administrative agency, or have any complaints or charges ever been preferred against you, and if so, with what results?

If your answer is yes to any part of this question, state the facts fully below.

Not Applicable.

33. List all cases in which you appeared as attorney of record during the last two years of your practice of law stating the nature of each case and the names and addresses of opposing counsel.

Young v. C.A.R. Transports — negligence per se, Paul S. Brown, 705 Olive Street, St. Louis, Missouri 63101.

Derrickson v. Board of Education — civil rights, Judson W. Calkins, 714 Locust Street, St. Louis, Missouri 63101.

Aetna Casualty v. General Electric — products liability, Gerald D. Morris, One Mercantile Center, St. Louis, Missouri 63101.

Alcott v. Roth, — imposition of trust, John L. Sullivan, 7 North Seventh Street, St. Louis, Missouri 63101.

Comerio v. Beatrice Foods — employment contract, James J. Sauter, 3411 Hampton Avenue, St. Louis, Missouri 63139.

O'Brien v. James B. Becker — breach of lease, Paul S. Brown, 705 Olive Street, St. Louis, Missouri 63101.

Cheatham v. Thomas — declaratory judgment, John Morton, 1206 Market Street, St. Louis, Missouri 63103.

Goehl v. Peabody Coal Co. — trespass and conversion, Stanley Walch, One Mercantile Center, St. Louis, Missouri 63101.

Green v. Tao — money advanced, David Hess, 200 South Bemiston, St. Louis, Missouri 63105.

ULI Leasing v. Musial & Biggie's — breach of lease, Irwin J. Frankel, 130 South Bemiston, St. Louis, Missouri 63105.

Vincent Brass & Aluminum v. Slay Warehousing, Thomas McGinn, 2214 South 7th Street, St. Louis, Missouri 63104.

St. Louis County v. Robert J. Karmi — zoning violation and subdivision restrictions, James White, 41 South Central, St. Louis, Missouri 63105.

Schlater v. Spirtas — destruction of property, Gary Bomkamp, 1015 Locust, St. Louis, Missouri 63101.

Signature of Applicant /s/ Anthony J. Sestric

Telephone: Office (314) 241-8600

Telephone: Home (314) 832-6239

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

Anthony J. Sestric, being first duty sworn, on oath deposes and says: I have read the foregoing questions and have answered them in my own handwriting, fully and frankly. The answers subscribed by me are true of my own knowledge.

Signature of Applicant /s/ Anthony J. Sestric

Subscribed and sworn to before me this 17th day of February, 1983.

/s/ Nancy K. Troutman
Notary Public

Judge's Certificate of Practice
Upon Foreign License

STATE BOARD OF LAW EXAMINERS
STATE OF ILLINOIS

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

PROOF OF FOREIGN PRACTICE
For Admission to the Bar

Name of Applicant ANTHONY JAMES SESTRIC

I, Gary M. Gaertner of the City of St. Louis and State of Missouri do hereby certify that I was duly elected and commissioned as a judge of the Circuit Court of the County of City of St. Louis in the State (or District) of Missouri in the year 1969, which Court is a Court of general jurisdiction, that I am acquainted with Anthony James Sestric now an applicant for admission to the Bar of Illinois upon a license or voucher of admission granted to him by the Supreme Court of Missouri in the State of Missouri, that said applicant was engaged in active practice of the law under such license or voucher for a period of sixteen (16) years to-wit, from September 4, A.D. 1965, to the present A.D. 19____, in a court or courts of record in said State of Missouri to-wit, in the Courts of Supreme Court, Courts of Appeals, and Circuit Courts in the County (or Counties) of St. Louis City and St. Louis County in such State, and that his residence and office were then in the City of St. Louis in such State. I further certify that said applicant is of god moral character and that my means of knowledge of the facts above certified to, are as follows: through personal acquaintance with the applicant both prior to and subsequent to my commission as Circuit Judge.

Dated at St. Louis, Missouri this 15th day of February, 1983

/s/ Gary M. Gaertner

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

I, Freeman R. Bosley, Jr. Clerk of the Court of the County of the City of St. Louis in the State (or District) of Missouri and keeper of the records and seal thereof, do hereby certify that Gary M. Gaertner whose name is subscribed to the foregoing certificate, was duly commissioned as a judge of the said court in the year 19____, that I am acquainted with his handwriting, and that his signature to said certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at St. Louis, Missouri in said County and State, this _____ day of February A.D. 1983.

/s/ Freeman R. Bosley, Jr.
Clerk

STATE BOARD OF LAW EXAMINERS
STATE OF ILLINOIS

CERTIFICATE OF DEAN OF LAW SCHOOL

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

PROOF OF LEGAL EDUCATION
For Admission to the Bar

I, Kenneth D. Dean, hereby certify that I am the Associate Dean, University of Missouri-Columbia School of Law and that Anthony James Sestric, the applicant herein, entered the law school of said college on the 11th day of September, A.D., 1962; that the basis of applicant's admission was LSAT score; that thereafter he pursued the course of study prescribed by said college for the period of three years, and duly finished the same; that he passed all of his examinations in said course of study and secured all credits required of him;

Subjects completed during attendance with satisfactory examinations: (Transcript may be submitted in lieu of list of subjects) Transcript attached

That the degree of Juris Doctor was conferred upon him on the 8th day of June A.D. 1965; having completed said course of study; and that I, as Dean of said school (would) recommend this graduate for a position of trust and confidence. Your answers to the following questions will be appreciated and kept confidential. The information will be referred to the appropriate Character & Fitness Committee.

1. Do your records or other information show anything adverse as to his

   Honesty? No
   Integrity? No
   General Conduct? No

2. Was he ever disciplined in any manner while in attendance? Yes. If so, explain, On probation under Rule 3a — Removed from probation the winter semester of 1964.

3. Did you ever hear of anything reflecting adversely upon his reputation and character? No

4. Remarks: Here please state any facts, not covered by the foregoing questions, unfavorable to the applicant which you think the committee should know in connection with its duty to determine whether he is worthy of the highest trust and confidence. None.

Dated at Columbia, Missouri, the 4th day of February A.D. 1983.

/s/ Kenneth D. Dean
Associate Dean

Your cooperation in supplying this information will be appreciated

Graduate's Average Law School Grade. see transcript
Ranked 45; *in a class of* 70

(Name) SESTRIC, ANTHONY JAMES
Home Address: 3137 Allen Ave., St. Louis, Mo.
Parent or Guardian: Anton Sestric, Collector of Customs
Place and date of birth: St. Louis, Mo. June 27, 1940
Marital status _____

College: Georgetown University; Sem. Hrs. 75; Grade P. Av. 2.52; Degrees _____

College: St. Louis University; Sem. Hrs. 19; Grade P. Av. 2.00; Degrees _____

LSAT Score 574 453 857 Other test scores _____
Other law schools attended _____ Sem. Hrs. _____
Activities _____
Honors _____

First Year rank: 58 in class of 85; June 26, 1963
2nd year rank: 52 in class of 83; June 4, 1964
3rd year rank: 35 in class of 60; June, 1965
Entire record rank: 45 in class of 70; June, 1965

DEAN'S OFFICE RECORD

Military Service: _____
Jan. 1963, Probation under Rule 3a
Satisfactorily completed moot court requirement, June 1963.
Jan. 24, 1964 Removed from probation.

Date: 2/4/83
A true copy:

SCHOOL OF LAW,
UNIVERSITY OF MISSOURI-COLUMBIA
GRADING SYSTEM

All law school grades are reported to the campus registrar as "S" (Satisfactory or passing) and "U" (Unsatisfactory or failing). The School of Law maintains an internal grading system. The grades recorded within the School of Law are the official grades for the purposes of determination of grade point averages, class rank and the satisfaction of law school requirements.

Effective May 15, 1980 the School of Law adopted a new grading scale for recording grades within the law school.

The previous grading scale was a 46 point scale with a range of 0.0 through 4.5. Under the prior scale, 0.6 was the lowest passing grade and a cumulative grade point average of 1.67 was the minimum required for graduation.

The new grading scale is also a 46 point scale but has a range of 55 through 100. Under the new scale 60 is the lowest passing grade and a cumulative grade point average of 70.0 is the minimum required for graduation.

Grades assigned prior to May 15, 1980 were converted to the new scale by multiplying them by 10 and adding 53.3 to the resulting figure. This has the effect of equating the minimum grade point average of 1.67 on the old scale to a minimum of 70.0 on the new scale.

This conversion process may result in the appearance of slightly lowering the student's grade point average. For example, there was no equivalent of the new grade of 100 on the prior scale, so that a student with a 4.5 grade point average on the old scale (the highest possible average) would convert only to a 98.3 on the new scale even though the actual level of performance would be reflected as a grade point average of 99 or 100 for grades given after the effective date of the new system.

The following table indicates a rough comparison of the new scale, the prior scale and the 4 point standard scale which is in general use in other divisions of the university.

Law School grading scale after May 1980	Law School grading scale 1961 - May 1980	UMC campus grading scale
90 - 100 [S]	3.6 - 4.5 [S]	A = 4.0
80 - 89 [S]	2.6 - 3.5 [S]	B = 3.0
70 - 79 [S]	1.6 - 2.5 [S]	C = 2.0
60 - 69 [S]	0.6 - 1.5 [S]	D = 1.0
55 - 59 [U]	0.0 - 0.5 [U]	F = 0.0

BEFORE THE CHARACTER AND FITNESS COMMITTEE
OF THE SUPREME COURT OF ILLINOIS

The Matter Of The Application Of
ANTHONY J. SESTRIC

For Admission To The Bar Of Illinois.

AFFIDAVIT OF CHARACTER AND FITNESS

Name of Affiant: Bernhardt C. Drumm, Jr.

Residence Address: 623 Kenilworth Lane, St. Louis, Missouri

Phone: 391-0540

Occupation: Judge

Age: 41

Are you related by blood or marriage to the Applicant? No

If so, what relationship do you bear to the Applicant? NA

For how long have you known the Applicant? In excess of 12 years

What relationships, such as employer, fellow student, social friend, and the like have you had with the Applicant which have aided you in forming an opinion of his character? Professional associations and social friends

Are you personally acquainted with the Applicant's business and social associates? Yes If so, what is their reputation in the community? For professional competence, high character and integrity — excellent

What is the Applicant's reputation for reliability? Outstanding

Integrity? Highest Industry? Highest Initiative? Highest

Sense of honor? Highest Morality? Highest

In your opinion does this Applicant possess the high standards of good moral character and general fitness required of admission ot the practice of law? If your answer if negative, explain in detail. Absolutely

If any of the foregoing information is from sources other than personal knowledge, please list the sources. All of the foregoing is based on personal knowledge.

Do you know of anything noteworthy in the Applicant's background which reflects favorably or unfavorably on the Applicant's character and fitness to practice law?

Applicant's entire career and personal life reflect most favorably upon his character and fitness to practice law. He is held in extremely high esteem by fellow members of the Bar, attorneys with whom or against whom he has worked and the judiciary in the St. Louis Metropolity area.

Do you recommend the Applicant for admission to the Bar of Illinois? Without reservation or qualification.

You may here expand any of the answers heretofore given or add any comments which you may desire which may aid the character and fitness committee to pass upon the qualifications of the Applicant for admission to the Bar of the State of Illinois. For this purpose you may supplement this affidavit by a letter in informal and narrative form.

The Applicant's record speaks for itself. I cannot add anything to that record other than to reiterate that I have the highest personal and professional regard for Mr. Sestric.

I hereby certify that the answers given from personal knowledge are correct. If other sources of information have been used, they are only those which I believe accurate and reliable.

February 3, 1983 /s/ B. A. Drumm, Jr.

Bernhardt C. Drumm, Jr., being duly sworn says: I have read the foregoing questions and have answered them honestly and frankly. The answers subscribed by me are true to the best of my knowledge.

/s/ B. C. Drumm, Jr.

BEFORE THE CHARACTER AND FITNESS COMMITTEE
OF THE SUPREME COURT OF ILLINOIS

The Matter Of The Application Of
ANTHONY J. SESTRIC

For Admission To The Bar Of Illinois.

AFFIDAVIT OF CHARACTER AND FITNESS

Name of Affiant: Maury B. Poscover

Residence Address: 7273 Maryland Avenue, University City, Missouri 63130

Phone: 863-4948

Occupation: Attorney

Age: 39

Are you related by blood or marriage to the Applicant? No

If so, what relationship do you bear to the Applicant?

For how long have you known the Applicant? 13 years

What relationships, such as employer, fellow student, social friend, and the like have you had with the Applicant which have aided you in forming an opinion of his character?

I served as a member of the Executive Committee of the Bar Association of Metropolitan St. Louis while Mr. Sestric was President. Previously, I served as a member of the Executive Committee of the Young Lawyers Section while Mr. Sestric was Chairman of that organization.

Are you personally acquainted with the Applicant's business and social associates? Yes If so, what is their reputation in the community? Honest, hardworking, contributing member of community

What is the Applicant's reputation for reliability? excellent

Integrity? very good Industry? excellent Initiative? excellent

Sense of honor? very high Morality? good

In your opinion does this Applicant possess the high standards of good moral character and general fitness required of admission ot the practice of law? If your answer if negative, explain in detail. Yes

If any of the foregoing information is from sources other than personal knowledge, please list the sources. n/a

Do you know of anything noteworthy in the Applicant's background which reflects favorably or unfavorably on the Applicant's character and fitness to practice law?

Mr. Sestric has been a contributing member of our profession and the community. He is dedicated to the improvement of the quality of justice.

Do you recommend the Applicant for admission to the Bar of Illinois? Yes

You may here expand any of the answers heretofore given or add any comments which you may desire which may aid the character and fitness committee to pass upon the qualifications of the Applicant for admission to the Bar of the State of Illinois. For this purpose you may supplement this affidavit by a letter in informal and narrative form.

I hereby certify that the answers given from personal knowledge are correct. If other sources of information have been used, they are only those which I believe accurate and reliable.

February 7, 1983 /s/ Maury B. Poscover

Maury B. Poscover, being duly sworn says: I have read the foregoing questions and have answered them honestly and frankly. The answers subscribed by me are true to the best of my knowledge.

/s/ Maury B. Poscover

BEFORE THE CHARACTER AND FITNESS COMMITTEE
OF THE SUPREME COURT OF ILLINOIS

The Matter Of The Application Of
ANTHONY J. SESTRIC

For Admission To The Bar Of Illinois.

AFFIDAVIT OF CHARACTER AND FITNESS

Name of Affiant: Michael N. Newmark

Residence Address: 18 Crestwood, St. Louis, Missouri

Phone: 727-2443

Occupation: Attorney

Age: 44

Are you related by blood or marriage to the Applicant? No

If so, what relationship do you bear to the Applicant? Friend and fellow attorney

For how long have you known the Applicant? over 10 years

What relationships, such as employer, fellow student, social friend, and the like have you had with the Applicant which have aided you in forming an opinion of his character?

I have worked with Mr. Sestric in many professional activities in an effort to improve the legal profession and the administration of justice.

Are you personally acquainted with the Applicant's business and social associates? Yes If so, what is their reputation in the community? They have an excellent reputation.

What is the Applicant's reputation for reliability? Excellent

Integrity? Excellent Industry? Excellent Initiative? Excellent

Sense of honor? Excellent Morality? Excellent

In your opinion does this Applicant possess the high standards of good moral character and general fitness required of admission ot the practice of law? If your answer if negative, explain in detail. YES.

If any of the foregoing information is from sources other than personal knowledge, please list the sources.

Do you know of anything noteworthy in the Applicant's background which reflects favorably or unfavorably on the Applicant's character and fitness to practice law? No.

Do you recommend the Applicant for admission to the Bar of Illinois? Yes.

You may here expand any of the answers heretofore given or add any comments which you may desire which may aid the character and fitness committee to pass upon the qualifications of the Applicant for admission to the Bar of the State of Illinois. For this purpose you may supplement this affidavit by a letter in informal and narrative form.

> Mr. Sestric has served our profession with distinction as president of The Bar Association of Metropolitan St. Louis and I had the privilege of working with him when he served and in other professional capacities including his service on the Executive Committee of the Bar Association of Metropolitan St. Louis when I was serving as president of the Association.

I hereby certify that the answers given from personal knowledge are correct. If other sources of information have been used, they are only those which I believe accurate and reliable.

February 3, 1983 /s/ Michael N. Newmark

Michael N. Newmark, being duly sworn says: I have read the foregoing questions and have answered them honestly and frankly. The answers subscribed by me are true to the best of my knowledge.

/s/ Michael N. Newmark

BEFORE THE CHARACTER AND FITNESS COMMITTEE
OF THE SUPREME COURT OF ILLINOIS

The Matter Of The Application Of
ANTHONY J. SESTRIC

For Admission To The Bar Of Illinois.

AFFIDAVIT OF CHARACTER AND FITNESS

Name of Affiant: Terry E. Brummer

Residence Address: Columbia, Missouri

Phone: 751-2500

Occupation: Director, Missouri Public Defender Commission

Age: 35

Are you related by blood or marriage to the Applicant? No

If so, what relationship do you bear to the Applicant?

For how long have you known the Applicant? Since September of 1980

What relationships, such as employer, fellow student, social friend, and the like have you had with the Applicant which have aided you in forming an opinion of his character?

Mr. Sestric served as President of the Bar Association of Metropolitan St. Louis for one year (May 1, 1981 - April 30, 1982) while I was Executive Director of the Bar Association.

Are you personally acquainted with the Applicant's business and social associates? Yes If so, what is their reputation in the community?

Excellent. Mr. Sestric's associates are leading members of the St. Louis legal community who obviously held him in high esteem to select him as the president of the leading bar association in the St. Louis area.

What is the Applicant's reputation for reliability? Excellent

Integrity? Excellent Industry? Excellent Initiative? Excellent

Sense of honor? Excellent Morality? Excellent

In your opinion does this Applicant possess the high standards of good moral character and general fitness required of admission ot the practice of law? If your answer if negative, explain in detail. Yes

If any of the foregoing information is from sources other than personal knowledge, please list the sources. N/A

Do you know of anything noteworthy in the Applicant's background which reflects favorably or unfavorably on the Applicant's character and fitness to practice law?

As indicated in question five. Mr. Sestric began his law career by clerking for a U.S. District Judge and was in extensive and active law practice in both the Federal and State courts.

Do you recommend the Applicant for admission to the Bar of Illinois? Yes

You may here expand any of the answers heretofore given or add any comments which you may desire which may aid the character and fitness committee to pass upon the qualifications of the Applicant for admission to the Bar of the State of Illinois. For this purpose you may supplement this affidavit by a letter in informal and narrative form.

I hereby certify that the answers given from personal knowledge are correct. If other sources of information have been used, they are only those which I believe accurate and reliable.

2/16/83 /s/ Terry E. Brummer

Terry E. Brummer, being duly sworn says: I have read the foregoing questions and have answered them honestly and frankly. The answers subscribed by me are true to the best of my knowledge.

/s/ Terry E. Brummer

BEFORE THE CHARACTER AND FITNESS COMMITTEE
OF THE SUPREME COURT OF ILLINOIS

The Matter Of The Application Of
ANTHONY J. SESTRIC

For Admission To The Bar Of Illinois.

AFFIDAVIT OF CHARACTER AND FITNESS

Name of Affiant: Leo V. Garvin, Jr.

Residence Address: 16 Burroughs Lane, St. Louis, Missouri 63124

Phone: 997-1576

Occupation: Attorney

Age: 39

Are you related by blood or marriage to the Applicant? No

If so, what relationship do you bear to the Applicant? Not applicable

For how long have you known the Applicant? Since May, 1977

What relationships, such as employer, fellow student, social friend, and the like have you had with the Applicant which have aided you in forming an opinion of his character?

We worked in the same law firm in 1977-78. During that time, we worked closely on several matters together, including one Court tried case which lasted fourteen weeks of in-Court time over nine months. We saw each other socially during that time and have maintained a social relationship.

Are you personally acquainted with the Applicant's business and social associates? Yes If so, what is their reputation in the community?

They come from a broad spectrum of community life; many are civic and business leaders. Their reputation is excellent

What is the Applicant's reputation for reliability? Highest

Integrity? Highest Industry? Highest Initiative? Highest

Sense of honor? Highest Morality? Highest

In your opinion does this Applicant possess the high standards of good moral character and general fitness required of admission ot the practice of law? If your answer if negative, explain in detail. Yes.

If any of the foregoing information is from sources other than personal knowledge, please list the sources. Not applicable my view is however shared by many.

Do you know of anything noteworthy in the Applicant's background which reflects favorably or unfavorably on the Applicant's character and fitness to practice law?

I know nothing unfavorable in his background.

Do you recommend the Applicant for admission to the Bar of Illinois? Yes.

You may here expand any of the answers heretofore given or add any comments which you may desire which may aid the character and fitness committee to pass upon the qualifications of the Applicant for admission to the Bar of the State of Illinois. For this purpose you may supplement this affidavit by a letter in informal and narrative form.

I hereby certify that the answers given from personal knowledge are correct. If other sources of information have been used, they are only those which I believe accurate and reliable.

February 15, 1983 /s/ Leo V. Garvin, Jr.

Leo V. Garvin, Jr., being duly sworn says: I have read the foregoing questions and have answered them honestly and frankly. The answers subscribed by me are true to the best of my knowledge.

/s/ Leo V. Garvin, Jr.

WHALEN, MURPHY, REID, DANIS,
GARVIN AND TOBBEN
Attorneys and Counselors
8850 Ladue Road
St. Louis, Missouri 63124
(314) 863-5100

Jerry J. Murphy, P.C.
Christopher K. Reid, P.C.
David O. Danis, P.C.
Leo v. Garvin, Jr.
Daniel G. Tobben, P.C.

Of Counsel
Fred B. Whalen

Richard Alan Cooper

February 15, 1983

Character and Fitness Committee
of the Supreme Court of Illinois
Springfield, Illinois

Re: In the matter of the Application of Anthony J. Sestric for Admission to the Bar of Illinois

Dear Committee Members:

It is with great pleasure that I recommend Anthony J. Sestric for admission to the Bar of Illinois.

I first met Mr. Sestric in the late Spring of 1977, when he became a partner in the law firm of Fordyce & Mayne. We worked together on several matters during his time at the firm and became good friends. He impressed me then with his tireless work habits, attention to detail and understanding of a wide range of areas of the law. His preparation and presentation of the St. Louis City Schools' desegregation case remains the single best handling of complex litigation that I have ever witnessed.

He also gave unselfishly of his time in our Association activities, as his application will indicate. Even more impressive

was and has been his ability to do all of this and still maintain and honor his obligations to his family. From my vantage point, he has been able to serve as son, husband and father with the same degree of excellence that he has achieved in his law practice.

The highest compliment I feel a man can pay another is that he would entrust his family's well-being to that man. It is a compliment that I feel fortunate that I would bestow in comfort upon as many as three or four. Mr. Sestric is one of those men.

Do not hestitate to contact me if I can be of any further assistance.

Very truly yours,

/s/ Leo V. Garvin, Jr.

Anthony J. Sestric, Attorney at Law
1015 Locust Street, Suite 501
St. Louis, Missouri 63101 2605

FOUR HUNDRED AND NO/100 . . . . . DOLLARS

Date	To the Order of	Check amount
5-83	State Board of Law Examiners	400.00

Anthony J. Sestric, Attorney at Law
General Account

Cass Bank and Trust Company
St. Louis, Missouri /s/ Anthony J. Sestric

Exhibit C

NATIONAL CONFERENCE OF BAR EXAMINERS
Multistate Professional Responsibility Examination

EXAMINEE'S REPORT OF SCORES

Raw Score	Scaled Score	Test Date	Social Security Number
42	126	03/18/83	490-30-6276

Sestric, Anthony J.
3967 Holly Hills
St. Louis, Mo. 63116

You requested your scores reported to the following jurisdiction:

14 Illinois Passing Scaled Score is 65

Each jurisdiction has the authority to determine its own passing score. If the jurisdiction you chose does not list a passing score, check with the board of bar examiners in that state to determine the passing score.

EXPLANATION OF SCORES

Your RAW SCORE is the number of test questions that you answered correctly in the examination. The lowest possible raw score is 0; the highest is 50.

SCALED SCORES are standard scores that range from 50 (low) to 150 (high). The original mean (average) scaled score was established at 100. The conversion of raw scores to scaled scores involves a statistical process that adjusts for variations in difficulty of different forms of the examination so that any particular scaled score will represent the same level of knowledge from test to test. For instance, if this test were more difficult that previous forms, then your scaled score would be adjusted upward to account for this difference. If this test were

easier than previous forms, then your scaled score would be adjusted downward to account for this difference. If this test were easier than previous forms, then your scaled score would be adjusted downward to account for this difference. The purpose of these adjustments is to help ensure that no examinee is unfairly penalized (or rewarded) for taking a harder (or easier) form of the test.

Exhibit D

STATE BOARD OF LAW EXAMINERS
STATE OF ILLINOIS

Members of the Board

Len Young Smith, President, Chicago
Stuart Duhl, Chicago
Francis D. Morrissey, Chicago
George B. Lee, Harrisburg
Donald M. Funk, Sec.-Treas,
Springfield

Donald H. Funk, Sec-Treas.
Springfield, Illinois 62701

March 22, 1983

Mr. Anthony J. Sestric
1015 Locust Street, Suite 601
St. Louis, Missouri 63101

Dear Mr. Sestric:

Your application for admission to the bar of Illinois on your Missouri license pursuant to Rule 705 and your letter of February 25, 1983 have been received and reviewed by the Board of Law Examiners.

Rule 705 (d) includes the requirement that each applicant for admission under that Rule must establish that "he is an actual resident of the State of Illinois". From the information contained in your application it does not appear that you meet the requirement which we have no authority to waive.

Your check No. 2605 in the amount of $400.00 is returned herewith.

Sincerely,

Donald H. Funk
Secretary

DHF:q
Enc.

Exhibit E

IN THE SUPREME COURT OF ILLINOIS
IN THE MATTER OF THE APPLICATION OF:
ANTHONY J. SESTRIC
FOR ADMISSION TO THE BAR OF ILLINOIS
ON FOREIGN LICENSE.

MOTION IN THE ALTERNATIVE FOR ADMISSION TO THE BAR, OR FOR A WRIT OF SUPERINTENDING AUTHORITY

Comes now your Movant, having been duly sworn, and moves this Honorable Court, in the alternative, for its order either approving his application for admission to the Bar of Illinois or for its order authorizing and directing the State Board of Law Examiners of the State of Illinois to accept, review, and process his Application for Admission to the Bar of the State of Illinois, without regard to the physical residence of your Movant. In support thereof, Movant states as follows:

1. Your Movant is an attorney and counsellor at law, a member of the Missouri Bar, licensed to practice law in the Supreme Court of Missouri, the highest court of law of the State of Missouri, as well as various other federal courts and administrative agencies. Your Movant has been so licensed to practice law before the highest court of the State of Missouri from and since September 4, 1965.

2. On February 25, 1983, your Movant mailed and submitted his application for admission to the Bar of Illinois on foreign license, along with his check in the amount of $400.00. A copy of the transmittal letter, application, and check are attached to this Motion, marked "Exhibit A," and the contents thereof are incorporated herein by reference.

3. On March 18, 1983, your Movant sat for, took, and passed the Multistate Professional Responsibility Examination. A

copy of the report of the scores has been forwarded to the State Board of Bar Examiners for the State of Illinois. A copy of the report of scores is attached hereto, marked "Exhibit B," and the contents thereof are incorporated herein by reference.

4. On March 24, 1983, your Movant received a letter from The Honorable Donald H. Funk, Secretary of the State Board of Law Examiners for the State of Illinois advising your Movant that his application would not be processed or approved because your Movant was not then "an actual resident of the State of Illinois."

5. Your Movant has met all requirements of this Court, including arranging for a permanent office for the practice of law in the State of Illinois, except that he is not an actual physical resident of the State of Illinois.

6. Your Movant's personal residence is physically located 1.66 miles from the Missouri-Illinois border. Your Movant resides in the City of St. Louis, Missouri, which city is immediately adjacent to and contiguous with the state border of the State of Illinois. The current business address of your Movant is less than one (1) mile from the Missouri-Illinois border, and is located in the City of St. Louis, which city is immediately adjacent to and contiguous with St. Clair County, Illinois.

7. That there are, across the Mississippi River, which separates Missouri and Illinois, six (6) bridges connecting the City of St. Louis to the State of Illinois, all of which bridges are accessible and immediately available to your Movant for purposes of travelling to and being available to any Court in Illinois.

8. The Illinois Supreme Court Rules allow admission to the Bar of the State of Illinois regardless of the residence of the applicant if the applicant takes the bar examination of the State of Illinois. It is only for those applicants for admission to the Bar of the State of Illinois on foreign license who are required to maintain full-time, physical residence in the State.

9. Prior to 1967, attorneys were authorized to be admitted to the Bar of the State of Illinois on foreign license without the necessity of maintaining an actual residence in the State of Illinois.

10. Under the circumstances of this case, the requirement that your Movant maintain an actual residence in the State of Illinois fails to serve any compelling state interest and is violative of the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, your Movant prays an order of this Court, in the alternative:

1. To approve his application for admission to the Illinois Bar on foreign license, or,

2. To direct the State Board of Law Examiners of the State of Illinois to process his application for admission, regardless of and waiving the requirement that he be an actual resident of the State of Illinois, or,

3. Repealing, holding null and void, or declaring unconstitutional that part of Supreme Court Rule 705 which requires an application for admission to the Bar of the State of Illinois under foreign license to be an actual resident of the State of Illinois.

Respectfully submitted,

/s/ ANTHONY J. SESTRIC
1015 Locust Street, Suite 601
St. Louis, Missouri 63101
(314) 241-8600
Movant and Attorney Pro Se

STATE OF MISSOURI

SS.

CITY OF ST. LOUIS

On this 15th day of April, 1983, before me, a Notary Public, appeared Anthony J. Sestric, and having been duly sworn by me, stated that he has read the above and foregoing Motion and that the matters and things contained therein are true and correct, based upon his personal information and belief and that he has executed the above and foregoing Motion as his free act and deed.

/s/ Nancy K. Troutman
Notary Public

Nancy K. Troutman
Notary Public, State of Missouri
My Commission expires Aug. 22, 1986
CITY OF ST. LOUIS

Exhibit F

STATE OF ILLINOIS
OFFICE OF
CLERK OF THE SUPREME COURT
SPRINGFIELD
62708

Juleann Hornyak
Clerk

Telephone
Area Code 217
782-2035

May 10, 1983

Mr. Anthony J. Sestric
Attorney at Law
1015 Locust Street — #601
St. Louis, Missouri 63101

In re: Anthony J. Sestric, petitioner.
No. M.R. 3056

Dear Mr. Sestric:

The Supreme Court today DENIED your motion for waiver of Rule 705 (d) and for admission to the bar of Illinois on foreign license.

Very truly yours,

/s/ Juliann Hornyak
Clerk of the Supreme Court

JH: gn
cc—Mr. Donald H. Funk
State Board of Law Examiners
Springfield, IL

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF ILLINOIS

No. 83-3134

Anthony J. Sestric,
Plaintiff,

v.

William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Seymour F. Simon, Robert C. Underwood, Daniel P. Ward, Judges of and Constituting the Supreme Court of the State of Illinois,

and

Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey, and Stuart Duhl, Members of and Constituting the State Board of Law Examiners of the State of Illinois,
Defendants.

AMENDED ANSWER

Defendants, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Semour F. Simon, Robert C. Underwood, and Daniel P. Ward, Justices of the Supreme Court, by Neil F. Hartigan, Attorney General of the State of Illinois, answer the Amended Complaint in this cause as follows:

1-13. Defendants repeat their answers to paragraphs 1 through 13 of the Amended Complaint, respectively, as if each answer had been set forth anew.

14. Defendants neither admit nor deny the allegations of paragraph 14 of the Amended Complaint in this cause, lacking sufficient information to form a belief.

AFFIRMATIVE DEFENSE

The Complaint in this cause fails to set forth a claim for which relief may be granted.

Respectfully submitted,

WILLIAM G. CLARK, JOSEPH H. GOLDENHERSH, THOMAS J. MORAN, HOWARD C. RYAN, SEYMOUR F. SIMON, ROBERT C. UNDERWOOD, and DANIEL P. WARD,

Defendants,

NEIL F. HARTIGAN,
Attorney General, State of Illinois,

Attorney for Defendants,

By: A.L. Zimmer
Special Assistant Attorney General

A. L. ZIMMER
Special Assistant Attorney General
Department of Registration and Education
320 West Washington Street
Springfield, Illinois 62782
Of Counsel.

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF ILLINOIS

No. 83-3134

Anthony J. Sestric,
Plaintiff,

vs.

William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Seymour F. Simon, Robert C. Underwood, Daniel P. Ward, Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey and Stuart Duhl,
Defendants.

ANSWER WITH AFFIRMATIVE DEFENSES

HOWARD C. RYAN, Chief Justice of the Supreme Court of Illinois, WILLIAM G. CLARK, JOSEPH H. GOLDENHERSH, THOMAS J. MORAN, SEYMOUR F. SIMON, ROBERT C. UNDERWOOD, and DANIEL P. WARD, Justices of the Supreme Court of Illinois, by NEIL F. HARTIGAN, Attorney General of the State of Illinois, hereby answer the Complaint in this cause against them and set forth certain affirmative defenses.

ANSWER

1. The Defendants appearing hereby neither admit nor deny the allegations of paragraph 1 of the Complaint in this cause, having insufficient information to frame a belief.

2. The Defendants appearing hereby admit the allegations of paragraph 2 of the Complaint in this cause.

3. The allegations of paragraph 3 of the Complaint in this cause are not directed to the Defendants appearing hereby and no answer is made thereto.

4. The Defendants appearing hereby deny the allegations of paragraph 4 of the Complaint in this cause.

5. Defendants appearing hereby, having denied that jurisdiction is proper further deny that venue is proper in the Central District of Illinois, but admit that if jurisdiction is present, venue is proper in the Central District of Illinois.

6. The Defendants appearing hereby admit the allegations of paragraph 6 of the Complaint in this cause.

7. The Defendants appearing hereby admit the allegations of paragraph 7 of the Complaint in this cause.

8. The Defendants appearing hereby admit the allegations of paragraph 8 of the Complaint in this cause.

9. The Defendants appearing hereby admit the allegations of paragraph 9 of the Complaint in this cause.

10. The Defendants appearing hereby admit the allegations of paragraph 10 of the Complaint in this cause.

11. The Defendants appearing hereby admit the allegations of paragraph 11 of the Complaint in this cause.

12. The Defendants appearing hereby admit the allegations of paragraph 12 of the Complaint in this cause.

13. The Defendants appearing hereby deny each and every allegation of paragraph 13 of the Complaint in this cause.

AFFIRMATIVE DEFENSE

The Complaint in this cause fails to set forth a claim for which relief may be granted.

WHEREFORE, the Defendants appearing hereby respectfully request the Court to deny any and all relief to the Plaintiff and to grant judgment in their behalf on each and every cause of action set forth in the Complaint in this cause.

Respectfully submitted,

WILLIAM G. CLARK, JOSEPH H. GOLDENHERSH, THOMAS J. MORAN, HOWARD C. RYAN, SEYMOUR F. SIMON, ROBERT C. UNDERWOOD, DANIEL P. WARD, LEN YOUNG SMITH, DONALD H. FUNK, GEORGE B. LEE, FRANCIS D. MORRISSEY and STUART DUHL,
Defendants,

NEIL F. HARTIGAN, Attorney General of the State of Illinois,
Attorney for Defendants

By: A. L. ZIMMER
Assistant Attorney General

A. L. ZIMMER
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-1090

Of Counsel

CERTIFICATE OF SERVICE

A. L. Zimmer, Assistant Attorney General, herein certifies that he has served a copy of the foregoing ANSWER WITH AFFIRMATIVE DEFENSES upon:

Anthony J. Sestric
1015 Locust Street
St. Louis, Missouri 63101

by mailing to him a true copy thereof at the address referred to above in an envelope duly addressed to him, bearing proper first class postage and deposited in the United States mail at Springfield, Illinois this 25th day of July, 1983.

A. L. Zimmer
Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF ILLINOIS

Cause No. 83-3134

Anthony J. Sestric,
Plaintiff,

vs.

William G. Clark, Joseph [illegible]
Goldenhersh, Thomas J. Moran,
Howard C. Ryan, Seymour F.
Simon, Robert C. Underwood,
Daniel P. Ward, Judges of and
Constituting the Supreme
Court of the State of
Illinois,

and

Len Young Smith, Donald H.
Funk, George B. Lee,
Francis D. Morrissey and
Stuart Duhl, Members of and
Constituting the State Board
of Law Examiners of the
State of Illinois,
Defendants.

ANSWERS TO
PLAINTIFF'S FIRST INTERROGATORY TO
DEFENDANTS SMITH, FUNK, LEE, MORRISSEY,
AND DUHL

Comes now the Plaintiff, and submits the following Interrogatory to Defendants Smith, Funk, Lee, Morrissey, and Duhl, Members of and Constituting the State Board of Law Examiners of the State of Illinois, to wit:

1. State and list the total number of lawyers licensed to practice law in the State of Illinois, who did not physically reside in the State of Illinois, as of the date of the adoption of Illinois Supreme Court Rule 705(d) in either its present or original form.

1. This information is not available in our office. We do not maintain the roll of attorneys who are licensed to practice law in Illinois as of any given date.

2. State and list the total number of attorneys licensed to practice law in the State of Illinois who were not actual residents of the State of Illinois as of February 25, 1983.

Same answer as No. 1

3. State and list the total number of attorneys holding licenses to practice law in the State of Illinois who are not residents of the State of Illinois as of the date of your Answers to these interrogatories.

Same answer as No. 1

4. State and list the number of lawyers who have become licensed to practice law in the State of Illinois under the provisions of Illinois Supreme Court Rule 705, or any predecessor rule which provide for admission on foreign license, prior to the adoption of Illinois Supreme Court Rule 705(d).

Rule 705(d) in its present form was adopted by the Supreme Court on May 15, 1980. However, all of the provisions of Rule 705(d), including the residency requirement, have been in effect as a part of Rule 705 since January 1, 1967. Our records indicate that the number of lawyers admitted on foreign license from December, 1899 to January 1, 1967 is 3,818.

5. State and list the total number of lawyers who have been admitted to practice law or have become licensed to practice law in the State of Illinois under the provisions of Illinois Supreme

Court Rule 705 who were or are not now residents of the State of Illinois, subsequent to the adoption of Illinois Supreme Court Rule 705.

Rule 705 was adopted by the Supreme Court effective January 1, 1967. Since that date, no lawyers have been admitted to practice law or have been licensed to practice law in Illinois pursuant to Supreme Court Rule 705 who were not then residents of the State of Illinois. We have no information as to how many lawyers admitted pursuant to said Rule are no longer residents of Illinois.

/s/ Donald H. Funk

STATE OF ILLINOIS

SS.

COUNTY OF SANGAMON

DONALD H. FUNK, being first duly sworn on oath, deposes and states that he is a member of the State Board of Law Examiners of the State of Illinois, Defendant herein, that he has read the Answers to Plaintiff's Interrogatories by him subscribed, knows the contents thereof, and that the same are true to his own knowledge and belief.

/s/ Donald H. Funk

Subscribed and sworn to before me this 27th day of September, A. D. 1983.

/s/ Juanita Holbert
Notary Public

(SEAL)

Alfred B. LaBarre
Ensel, Jones, Blanchard & LaBarre
Attorneys for Smith, Funk, Lee,
Morrissey and Duhl
425 East Monroe Street, Suite 201
Springfield, Illinois 62701
(217) 525-1364

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the attorney and Plaintiff of record by enclosing a copy of same in envelopes addressed to:

A. L. Zimmer
Assistant Attorney General
500 S. Second St.
Springfield, IL 62706

Anthony J. Sestric
1015 Locust Street
St. Louis, MO 63101

with postage fully prepaid thereon, and by depositing said envelopes in a U.S. Post Office mail box in Springfield, Illinois, on the 28th day of September, A. D. 1983.

/s/ Alfred B. LaBarre

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

Cause No. 83-3134

Anthony J. Sestric,
Plaintiff,

vs.

William G. Clark, Joseph H. Goldenhersh,
Thomas J. Moran, Howard C. Ryan,
Semour F. Simon, Robert C. Underwood,
and Daniel P. Ward,
Judges of and Constituting the
Supreme Court of the State of
Illinois,

Len Young Smith, Donald H. Funk,
George B. Lee, Francis D. Morrissey,
and Stuart Duhl,
Members of and Constituting the State
Board of Law Examiners of the State
of Illinois,
Defendants.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Comes now the Plaintiff, and pursuant to F.R.C.P. 56, moves for an Order of Summary Judgment in favor of Plaintiff and against all Defendants, and states that upon Plaintiff's verified Amended Complaint, the Answers to Interrogatories, and the Stipulation of Fact entered on the record on October 14, 1983, there is no genuine issue as to any material fact and that Plaintiff is entitled to a judgment as a matter of law.

ANTHONY J. SESTRIC
1015 Locust Street, Suite 1110
St. Louis, Missouri 63101
(314) 241-8600
Attorney Pro Se

I hereby certify that a copy of the above and foregoing Plaintiff's Motion for Summary Judgment has been served upon the Defendants herein by depositing the same in the United States mail this 18th day of October, 1983, addressed to:

Mr. A. L. Zimmer
Special Assistant Attorney General
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706

Attorney for Defendants, Clark,
Goldenhersh, Moran, Ryan,
Simon, Underwood, and Ward

and

Mr. Alfred B. LaBarre
c/o Ensel, Jones, Blanchard & LaBarre
Attorneys at Law
425 East Monroe Street, Suite 201
Springfield, Illinois 62701

Attorneys for Defendants, Smith,
Funk, Lee, Morrissey, and Duhl

ANTHONY J. SESTRIC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

No. 83-3134

Filed Nov. 8, 1983

Robert J. Kauffman, Clerk
U.S. District Court
Central District of Illinois

Anthony J. Sestric,
Plaintiff,

v.

William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Seymour F. Simon, Robert C. Underwood, Daniel P. Ward, Judges of and Constituting the Supreme Court of the State of Illinois,

and

Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey and Stuart Duhl, Members of and Constituting the State Board of Law Examiners of the State of Illinois,
Defendants.

MOTION FOR SUMMARY JUDGMENT

Defendants LEN YOUNG SMITH, DONALD H. FUNK, GEORGE B. LEE, FRANCIS D. MORRISSEY and STUART DUHL, by their attorney, Alfred B. LaBarre, move pursuant to

Federal Rule of Civil Procedure 56 for Summary Judgment, and in support thereof, state as follows:

1. There are no genuine issues of fact remaining to be tried.

2. Defendants are entitled to a judgment as a matter of law.

3. These Defendants, as well as Co-Defendants CLARK, GOLDENHERSH, MORAN, RYAN, SIMON, UNDERWOOD and WARD, have previously requested judgment on the pleadings and submitted memoranda of law in support of said motions. These Defendants incorporate all previous memoranda of law submitted by all Defendants in support of the instant Motion for Summary Judgment.

WHEREFORE, these Defendants respectfully pray the Court grant them Judgment.

LEN YOUNG SMITH, DONALD H. FUNK, GEORGE B. LEE, FRANCIS D. MORRISSEY and STUART DUHL

By: Alfred B. LaBarre
Their Attorney

Alfred B. LaBarre
Ensel, Jones, Blanchard & LaBarre
425 East Monroe Street, Suite 201
Springfield, Illinois 62701
(217) 525-1364

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the attorney and Plaintiff of record by enclosing a copy of same in envelopes addressed to:

A. L. Zimmer
Special Assistant Attorney General
320 West Washington St.
Springfield, IL 62782

Anthony J. Sestric
1015 Locust Street
St. Louis, MO 63101

with postage fully prepaid thereon, and by depositing said envelopes in a U. S. Post Office mail box in Springfield, Illinois, on the 8th day of November, A.D. 1983.

/s/ Alfred B. LaBarre

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF ILLINOIS

No. 83-3134

Anthony J. Sestric
Plaintiff,

vs.

William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Seymour F. Simon, Robert C. Underwood, Daniel P. Ward, Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey and Stuart Duhl,
Defendants.

MOTION FOR JUDGMENT ON THE PLEADINGS

Howard C. Ryan, Chief Justice of the Supreme Court of Illinois, William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Seymour F. Simon, Robert C. Underwood and Daniel P. Ward, Justices of the Supreme Court of Illinois, by NEIL F. HARTIGAN, Attorney General of the State of Illinois, hereby move the Court to enter judgment for them on the pleadings in this cause pursuant to Rule 12c of the Federal Rules of Civil Procedure. In support of their Motion, they state that there are no matters of material fact to be tried and that the Complaint sets forth the material facts necessary for disposition of the cause, and further that the Complaint and Answer together with the Affirmative Defense of the Defendants appearing hereby frame the legal issues such that the Court may rule without further proceedings. The Defendants appearing hereby adopt a certain Memorandum of Law in Support of the Motion for

Judgment on the Pleadings, which Memorandum is submitted herewith and is incorporated expressly herein by reference.

WHEREFORE, the Defendants appearing hereby request the Court grant judgment in their favor on all issues as they are set forth by the pleadings.

Respectfully submitted,

WILLIAM G. CLARK, JOSEPH H. GOLDENHERSH, THOMAS J. MORAN, HOWARD C. RYAN, SEYMOUR F. SIMON, ROBERT C. UNDERWOOD, DANIEL P. WARD, LEN YOUNG SMITH, DONALD H. FUNK, GEORGE B. LEE, FRANCIS D. MORRISSEY and STUART DUHL,
Defendants,

NEIL F. HARTIGAN, Attorney General of the State of Illinois,
Attorney for Defendants

By: A. L. Zimmer
Special Assistant Attorney General

A. L. Zimmer
Special Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-1090

Of Counsel

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF ILLINOIS

No. 83-3134

Anthony J. Sestric,
Plaintiff,

v.

William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Seymour F. Simon, Robert C. Underwood, Daniel P. Ward, Judges of and Constituting the Supreme Court of the State of Illinois,

and

Len Young Smith, Donald H. Funk, George B. Lee, Francis D. Morrissey, and Stuart Duhl, Members of and Constituting the State Board of Law Examiners of the State of Illinois,
Defendants.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants William G. Clark, Joseph H. Goldenhersh, Thomas J. Moran, Howard C. Ryan, Seymour F. Simon, Robert C. Underwood, and Daniel P. Ward, Justices of the Supreme Court of Illinois, by Neil F. Hartigan, Attorney General of Illinois, move pursuant to Federal Rule of Civil Procedure 56 for summary judgment, saying in support thereof:

1. There is no genuine issue of material fact remaining to be tried.

2. Defendants are entitled to judgment as a matter of law.

3. Defendants moving hereby have previously requested judgment on the pleadings, and have offered a certain Memorandum of Law in support thereof. The arguments put forward in that motion and its memorandum are incorporated herein by reference.

4. A certain Memorandum of Law addressing, *inter alia,* defendants' Motion for Summary Judgement is incorporated herein by reference.

WHEREFORE, defendants pray the Court grant them judgment.

Respectfully submitted,

WILLIAM G. CLARK, JOSEPH H. GOLDENHERSH, THOMAS J. MORAN, HOWARD C. RYAN, SEYMOUR F. SIMON, ROBERT C. UNDERWOOD, and DANIEL P. WARD,
Defendants,

NEIL F. HARTIGAN, Attorney General, State of Illinois,
Attorney for Defendants,

By: A. L. Zimmer
Special Assistant Attorney General

A. L. Zimmer
Special Assistant Attorney General
Department of Registration and Education
320 West Washington Street
Springfield, Illinois 62782

Of Counsel.

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS — SPRINGFIELD DIVISION

No. 83-3134

Filed Mar. 2, 1984

Robert J. Kauffman, Clerk
U.S. District Court
Central District of Illinois

Anthony J. Sestric,
Plaintiff,

v.

William G. Clark;
Joseph H. Goldenhersh;
Howard C. Ryan;
Semour F. Simon;
Robert C. Underwood; and,
Daniel Ward, Judges of
and Constituting the Supreme Court
of the State of Illinois;
Len Young Smith;
Donald H. Funk;
George B. Lee;
Francis D. Morrissey;
Stuart Duhl, Members of
and constituting the State Board
of Law Examiners of the State
of Illinois.
Defendants.

ORDER

This case involves Plaintiff's application to practice law in the State of Illinois. Plaintiff met all of the Board of Law Examiner's requirements except the Illinois residency requirement.

Plaintiff's application was rejected because he was not "an actual resident of the State of Illinois" as required by Supreme Court Rule 705(d). Ill. Rev. Stat. ch. 110A, §705(d). The Supreme Court of Illinois denied Plaintiff's motion for a waiver of Rule 705(d). After the Supreme Court of Illinois denied Plaintiff's motion for waiver, Plaintiff brought this suit against all the members of the Supreme Court and the members of the Board of Law Examiners.

Plaintiff is a Missouri resident and is licensed to practice law in that state. Plaintiff sought a license to practice law in Illinois by way of Supreme Court Rule 705 which provides for qualification on a foreign license. Ill. Rev. Stat. ch. 110A, §705. Plaintiff's argument, briefly stated, is that Rule 705's residency requirement is unconstitutional. The Plaintiff contends the rule violates several provisions of the constitution and an Illinois law.[1] The Court, however, will limit its analysis to Plaintiff's claim that the rule contravenes the privileges and immunities clause.

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[1] Plaintiff argues that Defendants' actions violate Ill. Rev. Stat. ch. 13, § 12, which states:

> When any counselor or attorney at law, residing in any other state or territory, may desire to practice law in this state, such counselor or attorney shall be allowed to practice in the several courts in this state upon the same terms and in the same manner that counselors and attorneys at law residing in this state now are or hereafter may be admitted to practice law in such other state or territory.

Plaintiff states that the Supreme Court Rules of the Supreme Court of Missouri permit an Illinois resident who resides in a county bordering Missouri to obtain a Missouri license by qualification on a foreign license. Accordingly, because Plaintiff resides in a county bordering Illinois, he believes section 12 permits him to obtain an Illinois license by qualification on his Missouri license. Because the Court determines Illinois' residency requirement is unconstitutional, it does not reach Plaintiff's arguments concerning section 12.

Article IV, section 2 of the United States Constitution provides: "The Citizens of each State shall be entitled to all Privileges and immunities of Citizens in the several States." The clause's purpose is to afford the same privileges and immunities to noncitizens as a state does to its own citizens. "The section, in effect, prevents a State from discriminating against citizens of other States in favor of its own [citizens]." *Hague v. CIO*, 307 U.S. 496, 511 (1939). *See also Paul v. Virginia*, 8 Wall. 168, 180 (1869).

Although the privileges and immunities clause grants noncitizens the same rights as citizens of a state, the clause does not protect all rights. The privileges and immunities clause only protects "fundamental rights" against state infringement. *Baldwin v. Fish and Game Commission*, 436 U.S. 371 (1978). The clause protects basic and essential activities which, if interfered with, would frustrate the purpose of the formation of the country. *Id.* at 387. The *Baldwin* court defined fundamental activities as activities "basic to the maintenance or well being of the union." *Id.* at 388. In *Hicklin v. Obereck*, 437 U.S. 518 (1978), the Court clarified its definition of fundamental rights or activities. The *Hicklin* Court held that the privileges and immunities clause protected nonresidents "seeking to ply their trade, practice their occupation, or pursue a common calling within the State" from discrimination.[2] *Id.* at 324.

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[2] This case seems to illustrate that the privileges and immunities clause contains an affirmative grant of rights to individuals which can be triggered in the absence of a burden on commercial transactions. Thus, the privileges and immunities clause restricts acitivity that would not be constrained by the Commerce Clause. L. Tribe, *American Constitutional Law* § 6-5 at 327 n.7.

One of the interests protected by the privileges and immunities clause is the right to pursue a livelihood in a state where one is not a citizen. *Baldwin,* 436 U.S. at 386. At least one court has specifically held that the practice of law is a fundamental right protected by the clause against unjustified discrimination on the basis of residency. *Stalland v. South Dakota Board,* 530 F. Supp. 155 (D.S.D. 1982). The *Stalland* decision is supported by two Supreme Court decisions. *Goldfarb v. Virginia State Bar,* 421 U.S. 773 (1975), and *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), conclude that while law may be a profession it is also a commercial activity in many respects.

Having determined that the practice of law is a fundamental right does not conclude the court's duty. Even though the practice of law is a fundamental right, a state appropriately may apply some restrictions without violating the clause. The standard of review used for the privileges and immunities clause was noted in *Toomer v. Witsell,* 334 U.S. 385 (1948). The *Toomer* Court disallowed South Carolina's discrimination against nonresident fisherman because there had not been a showing that "noncitizen [constituted] a particular source of the evil at which the statute [was] aimed," or that the state discrimination had a "close relation" to a substantial state interest." *Id.* at 396. *Hicklin v. Obereck,* 437 U.S. 526-27, slightly varied the *Toomer* test. The *Hicklin* court stated that the challenged rules discrimination must bear "a substantial relationship to the particular 'evil' that nonresidents are said to present." *Id.* at 526. A statute is not unconstitutional because it is not made with mathematical precision or results in some inequity. *Dandridge,* 397 U.S. 471, 485 (1970). The statute or rule does not have to be the best one imaginable. A state, if it is to ease a problem by requiring discrimination against nonresidents, must "closely tailor" the means to aid the correction of the perceived problem. *Hicklin v. Obereck, supra* at 528.

Defendants offer several reasons as support for the discrimination against attorneys residing outside the State of Illinois. Defendants contend that actual residence assures that the Attorney will gain experience with the local law of Illinois that is necessary for successful representation of Illinois clients. There is no reason to believe that a noncitizen will lack experience with the laws of Illinois. The state can determine an attorney's knowledge of local law by examination at the time of admittance to the Bar. If Defendants are concerned about a continuing knowledge of Illinois law, they could require a periodic examination of attorneys to determine that the attorneys have continued their commitment to learning and using the law of Illinois. Thus, this reason fails both requirements of the *Hicklin* test - there is no indication that a noncitizen is a particular source of the evil and the state discrimination does not have a close relationship to eliminating the problem. Additionally, an attorney admitted to practice law in Illinois is not required to forfeit his license when he moves his place of residence to another state. The failure of the rule to require continuing residency, while not completely contradicting the asserted rationale behind the rule, makes Defendants' arguments seem somewhat self-serving. *See, e.g., Piper v. Supreme Court of New Hampshire,* 723 F.2d 110 (1st Cir. 1983).

Finally, a review of recent case law indicates that the residency requirement is unconstitutional. In *Piper, supra,* the First Circuit determined that a residency requirement was unconstitutional. The rule provided that a Bar applicant must either be a resident of the State of New Hampshire or have filed a statement of intention to reside in the State of New Hampshire. This requirement was interpreted to mean that a Bar applicant must established bona fide residencys at the time the oath of admission was administered. The *Piper* court held that the requirement violated the privileges and immunities clause. In *Stalland v. South Dakota Board of Bar Examiners,* 530 F.Supp. 155

(D.S.D. 1982), the court held the residencys requirement violated the privileges and immunities clause. That requirement required that "An applicant for admission to practice as an attorney or counselor at law in this state must be...a resident of this state...." *Id.* at 156 n.1. Again, in *Strauss v. Alabama State Bar,* 520 F. Supp. 173 (N.D. Ala. 1981), the court held the following rule unconstitutional:

> Any citizen...who is, at the date of filing of the application, a bona fide resident of the State of Alabama and is in fact a resident of the State of Alabama at the time certification to sit for the Bar examination, is entitled to be examined for admission to the Bar of Alabama at any examination held as herein prescribed....

Id. at 175. The *Strauss* court also found that the simple residency requirement violated the privileges and immunities clause.

Although I have carefully analyzed the case law and have little choice but to hold the residency requirement violates the privileges and immunities clause, I would be remiss if I did not briefly state my personal opinion on this matter. The courts, for laudable reasons, have determined that states may not discriminate against noncitizens seeking to practice a profession. These decisions, however, seem to me to fail to focus on the historical contributions of a local bar. A local bar is more perceptive of the problems and needs of the community. A local bar has a real and lasting commitment to the concerns of a community that would be lacking in a nonresident bar whose main, goal may be pecuniary gain. A local bar contributes to the civic and political progress of a community that will not exist with nonresident bar members. In my thirty-five years as a lawyer and judge, I have witnessed countless acts of pro bono work that would not be duplicated by a nonresident bar. Finally, from a strictly judicial viewpoint, there will be numerous problems in disciplining a nonresident bar. Having stated a

few, but not all, of my reservations about the result of the opinion, I must follow the decisions of the courts of appeal and the doctrine of *stare decisis.*

Accordingly, this Court grants Plaintiff's motion for summary judgment as follows: The present Illinois residency requirement established by Rule 705(d) is unconstitutional. Plaintiff may resubmit his application to the Board of Law Examiners for its re-examination in light of this opinion.

Enter this 2 day of March, 1984.

J. Waldo Ackerman
Chief U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS — SPRINGFIELD DIVISION

No. 83-3134

Filed March 6, 1984

Robert J. Kauffman, Clerk
U.S. District Court
Central District of Illinois

Anthony J. Sestric,
Plaintiff,

v.

William G. Clark;
Joseph H. Goldenhersh;
Howard C. Ryan;
Semour F. Simon;
Robert C. Underwood; and,
Daniel Ward, Judges of
and Constituting the Supreme Court
of the State of Illinois;
Len Young Smith;
Donald H. Funk;
George B. Lee;
Francis D. Morrissey;
Stuart Duhl, Members of
and constituting the State Board
of Law Examiners of the State
of Illinois,
Defendants.

ORDER

On March 2, 1984, this Court granted Plaintiff's motion for summary judgment, and declared Illinois' residency requirement for admission on a foreign license unconstitutional. It has

come to the Court's attention that Plaintiff, as an out-of-state resident, could be admitted to the Illinois State Bar if he passed the Illinois Bar Examination. *See* Ill. Rev. Stat. ch. 110A, § 704 (Supreme Court Rule 704). Because of this fact, the Court believes further evaluation of the privileges and immunities clause issues would be helpful.

Accordingly, pursuant to Fed. R. Civ. P. 59, the Court's order of March 2, 1984, is vacated. All parties are invited to submit additional briefs on the effect of Rule 704's nonresidency provisions on the privileges and immunities clause issues involved in this case. Any additional briefs must be submitted within thirty (30) days of this order.

Enter this 6 day of March, 1984.

J. Waldo Ackerman
Chief U.S. District Judge

STATE OF ILLINOIS

SS.

COUNTY OF SANGAMON

AFFIDAVIT

DONALD H. FUNK, being first duly sworn, on his oath deposes and states:

1. Affiant is the Secretary of the State Board of Law Examiners of the State of Illinois and has served in this capacity since November of 1981.

2. As Secretary of the Board, Affiant is personally familiar with the records of the Board of Law Examiners which are maintained and kept under his supervision.

3. Affiant has caused to occur a search and analysis of the records of the persons who took the February, 1984 Illinois State bar examination and from this search and analysis he knows the following:

a) Eight Hundred Seventy-Eight (878) persons sat for the February, 1984 Illinois State bar examination.

b) Forty-One (41) of those who took said examination were lawyers admitted in other jurisdictions who graduated from an approved law school more than six (6) years prior to making application for the examination.

c) Twelve (12) of said forty-one (41) attorneys had been admitted to practice in another jurisdiction for more than seven (7) years.

d) Each of said forty-one (41) attorneys received a waiver of Supreme Court Rule 703(b) by the State Board of Law Examiners.

e) No requests for a waiver of Rule 703(b) were denied as to any applicant for the February, 1984 examination.

4. Since November of 1981, the Illinois Board of Law Examiners has waived the six-year requirement of Rule 703(b) on all applications to take the Illinois Bar Examination by attorneys licensed to practice in another jurisdiction who have received a degree from an approved law school.

/s/ Donald H. Funk

Subscribed and sworn to before me this 5th day of April, A. D. 1984.

_____

Notary Public

(SEAL)

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS — SPRINGFIELD DIVISION

No. 83-3134

Filed July 6, 1984

Robert J. Kauffman, Clerk
U. S. District Court
Central District of Illinois

Anthony J. Sestric,
Plaintiff,

v.

William G. Clark;
Joseph H. Goldenhersh;
Howard C. Ryan;
Seymour F. Simon;
Robert C. Underwood; and,
Daniel Ward, Judges of
and Constituting the Supreme Court
of the State of Illinois;
Len Young Smith;
Donald H. Funk;
George B. Lee;
Francis D. Morrissey;
Stuart Duhl, Members of
and constituting the State Board
of Law Examiners of the State
of Illinois,
Defendants.

ORDER

This case involves Plaintiff's application to practice law in the State of Illinois. Plaintiff sought admission to the Bar under

Supreme Court Rule 705.[1] Ill.Rev. Stat. ch. 110A, § 705. This section allows an individual to be admitted to the Bar without taking the Bar exam, if the applicant has been admitted to prac-

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[1] Ill. Rev. Stat. ch. 110A, § 705 provides:

> Any person who has been admitted to practice in the highest court of law in any other State or territory of the United States or the District of Columbia may make application to the Board of Law Examiners for admission to the bar, without academic qualification examination, upon the following conditions:
>
> (a) The educational qualifications of the applicant are such as would entitle him to write the academic qualification examination in this State at the time he seeks admission, and he has resided and actively and continuously practiced law in such other jurisdiction for a period of at least five years of the seven years immediately prior to making the application.
>
> . . . .
>
> (d) Applications shall be in such form as the Board of Law Examiners shall prescribe. Each applicant shall establish, to the satisfaction of the Board of Law Examiners, that he is an actual resident of the State of Illinois, that he is at least 21 years of age, of good moral character and general fitness to practice law, and that upon admission to the bar he will actively and continously engage in the practice of law in this jurisdiction. The applicant shall furnish such proof of the practice requrements under paragraph (a) as may be required by the Board of Law Examiners. Each application shall be supported by a certificate of a judge of a court of general jurisdiction in the jurisdiction from which the applicant seeks admission certifying that the applicant has been admitted to, and that at the time of making said application he is a member in good standing of the bar of that jurisdiction.
>
> (e) In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.
>
> (f) An applicant who has taken and failed to pass the academic qualification examination in Illinois shall not be eligible to apply for admission on foreign license.

tice law in the highest court of any state, and has met several other requirements. One of those requirements is that the applicant must be an actual resident of the State of Illinois. Plaintiff's application was rejected because he was not an actual resident of the State of Illinois. The Supreme Court denied Plaintiff's motion for a waiver of the residency requirement, and the Plaintiff brought suit in this Court. Rule 704 allows a nonresident to gain admission to the Bar by taking the Illinois State Bar exam. Ill. Rev. Stat. ch. 110A, § 704.

Plaintiff is a Missouri resident and is licensed to practice law in that state. Plaintiff's argument, briefly stated, is that Rule 705's residency requirement is unconstitutional. Plaintiff contends the rule violates several provisions of the constitution and an Illinois law.

At the outset, the Court must decide one question of fact. Rule 703 requires that an applicant for the bar examination within the period of six years immediately prior to making application shall have pursued a course of law studies at a school approved by the American Bar Association. Ill.Rev.Stat. ch. 110A, § 703. Plaintiff argues that because of this rule he is not eligible to sit for the bar exam in Illinois. Defendants countered this allegation with an affidavit of Donald H. Funk. The affiant is the secretary of the State Board of Law Examiners and states that since November of 1981 the Illinois Board of Law Examiners has waived the six year requirement of Rule 703(b) on all applications to take the Illinois State Bar examination by attorneys licensed to practice in another jurisdiction who have received a degree from an approved law school. For the February, 1984, bar exam the Board of Law Examiners waived the six year requirement for all forty-one of the lawyers who were admitted in other jurisdictions who had graduated from an approved law school more than six years prior to making application for the exam. The Plaintiff has not submitted an affidavit to controvert the affidavit of Mr. Funk. Accordingly, the Court finds that Plaintiff could receive a waiver of 703(b).

Thus, the issue framed by this case is whether a rule that requires a foreign attorney to take the Bar exam before admission to the Bar violates a constitutional provision.

Article IV, section 2 of the United States Constitution provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The clause's purpose is to afford the same privileges and immunities to noncitizens as a state does to its own citizens. The section, in effect, prevents a State from discriminating against citizens of other States in favor of its own [citizens]." *Hague v. CIO*, 307 U.S. 496, 511 (1939). *See also Paul v. Virginia*, 8 Wall. 168, 180 (1869).

Although the privileges and immunities clause grants noncitizens the same rights as citizens of a state, the clause does not protect all rights. The privileges and immunities clause only protects "fundamental rights" against state infringement. *Baldwin v. Fish and Game Commission*, 436 U.S. 371 (1978). The clause protects basic and essential activities which, if interfered with, would frustrate the purpose of the formation of the country. *Id.* at 387. The *Baldwin* court defined fundamental activities as activities "basic to the maintenance or well being of the union." *Id.* at 388. In *Hicklin v. Obereck*, 437 U.S. 518 (1978), the definition of fundamental rights or activities was clarified. In *Hicklin* it was held that the privileges and immunities clause protected nonresidents "seeking to ply their trade, practice their occupation, or pursue a common calling within the State" from discrimination.[2] *Id.* at 324.

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[2] This case seems to illustrate that the privileges and immunities clause contains an affirmative grant of rights to individuals which can be triggered in the absence of a burden on commercial transactions. Thus, the privileges and immunities clause restricts activity that would not be constrained by the Commerce Clause. L. Tribe, *American Constitutional Law* § 6-5 at 327 n.7.

One of the interests protected by the privileges and immunities clause is the right to pursue a livelihood in a state where one is not a citizen. *Baldwin,* 436 U.S. at 386. At least one court has specifically held that the practice of law is a fundamental right protected by the clause against unjustified discrimination on the basis of residency. *Stalland v. South Dakota Board,* 530 F. Supp. 155 (D.S.D. 1982). The *Stalland* decision is supported by two Supreme Court decisions. *Goldfarb v. Virginia State Bar,* 421 U.S. 773 (1975), and *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), conclude that while law may be a profession it is also a commercial activity in many respects.

Having determined that the practice of law is a fundamental right does not conclude the court's duty. Even though the practice of law is a fundamental right, a state appropriately may apply some restrictions without violating the clause. The standard of review used for the privileges and immunities clause was noted in *Toomer v. Witsell,* 334 U.S. 385 (1948). The *Toomer* decision disallowed South Carolina's discrimination against nonresident fisherman because there had not been a showing that "noncitizens [constituted] a particular source of the evil at which the statute [was] aimed," or that the state discrimination had a "close relation" to a substantial state interest." *Id.* at 396. *Hicklin v. Obereck,* 437 U.S. 526-27, slightly varied the *Toomer* test. The *Hicklin* court stated that the challenged rule's discrimination must bear "a substantial relationship to the particular 'evil' that nonresidents are said to present." *Id.* at 526. A statute is not unconstitutional because it is not made with mathematical precision or results in some inequity. *Dandridge,* 397 U.S. 471, 485 (1970). The statute or rule does not have to be the best one imaginable. A state, if it is to ease a problem by requiring discrimination against nonresidents, must "closely tailor" the means to aid the correction of the perceived problem. *Hicklin v. Obereck, supra* at 528.

While there may be a fundamental right to practice law, there is no fundamental right to practice law without taking the Bar exam. Admission to the Bar by examination is the only way an Illinois resident, seeking his first law license, can gain admission to the Bar. Applicants under Rule 705 are the only applicants who are not required to take the Illinois Bar exam.

In *Lowrie v. Goldenhersch,* 521 F. Supp. 534 (N.D. Ill. 1981), Judge Grady examined the effect of the privileges and immunities clause on Illinois Supreme Court Rule 705. Judge Grady noted that a rule requiring a one year residency prior to admission to the Bar discriminated against all alien practitioners as a group. He believed that such a rule presented a *prima facie* violation of the privileges and immunities clause. It was there observed that Illinois had the same requirements for all applicants, in state and out of state, who wished to be admitted to the Bar. One of those requirements was the taking of the Bar exam but there was no requirement of in-state residency. Judge Grady characterized Rule 705 as outlining a privilege of admission without taking the Bar exam. He believed that the rule extended a privilege to alien practitioners that was not granted to residents in state "and thereby discriminates *in favor of alien practitioners.*" (emphasis added). If the rule discriminates at all, it favors practitioners who have practiced five years or more in the state of their license and have then moved to Illinois. The *Lowrie* Court concluded that since Rule 705 did not discriminate against alien practitioners as a group, it did not violate the privileges and immunities clause.

In *Hawkins v. Moss,* 503 F.2d 1171 (1974), *cert. denied,* 420 U.S. 928 (1973), the United States Court of Appeals for the Fourth Circuit held that an exam requirement did not violate the privileges and immunities clause. South Carolina, the state whose licensing requirements had been challenged, like Illinois, allowed some out-of-state attorneys to be admitted without taking the Bar exam. South Carolina's exemption was a reciprocity provision that granted an exemption on the same basis as the ap-

plicant's licensing state. The *Hawkins* Court held that "so long...as the state does not subject the migrant attorney, seeking the right to practice in the State, to no more onerous requirements than those imposed on its own citizens seeking such right, it cannot be said that the state has violated the [Privileges and Immunities Clause]." 503 F.2d at 1179. Like *Lowrie, Hawkins* held that the rule conferred a preference on migrant attorneys which could not be obtained by lifelong citizens of South Carolina. But, it was noted that simply because the Plaintiff could not qualify for a certain preference but had to qualify on the same terms as lifelong citizens of South Carolina gave him no right to complain.

In *Piper v. Supreme Court of New Hampshire,* 723 F.2d 110 (1983), *cert. granted,* ____ U.S. ____, the recent case decided by the United States Court of Appeals for the First Circuit, the court noted that a state has a great deal of freedom to determine the fitness of an applicant to practice law. The First Circuit would allow a state to require appropriate training and familiarity with state law. A Bar exam for an attorney would appear to be allowed by this decision. *See also Stalland v. South Dakota Board of Bar Examiners,* 530 F. Supp. 155 (D.S.D. 1982)("[T]he requirement of a bar examination serves to determine an applicant's knowledge of state substantive laws and procedural rules.")

Plaintiff also contends that Rule 705 violates his right to interstate travel to pursue his profession. In support of this claim, he cites *Shapiro v. Thompson,* 394 U.S. 618 (1969); *Dunn v. Blumstein,* 405 U.S. 330 (1972); *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974). All of these cases were considered in *Lowrie, supra,* at 537. Like the court in *Lowrie,* this Court finds that the requirement that Plaintiff must take the Bar exam to be licensed to practice law in this state is not so burdensome as to constitute a penalty against the exercise of a constitutional right to travel. *Id.*

Plaintiff argues that the statute violates the commerce clause. U.S. Const., Art. I, § 8, cl. 3. For a state's law to violate the commerce clause there must be some discrimination against out-of-state commerce. *See, e.g., Hunt v. Washington Apple Advertising Commission,* 432 U.S. 333 (1977). In a previous portion of this opinion, it is concluded that there was no discrimination under the privileges and immunities clause. The commerce clause and the privileges and immunities clause have a similar standard of review. *Hicklin, supra,* at 531-32. If anything, the commerce clause has the additional requirement of showing a burden on commercial intercourse. In this case, the Plaintiff has not shown such a burden. As the Court in *Shapiro v. Cook,* 552 F. Supp. 581, 589 (N.D.N.Y. 1982), said, "[I]f a state may constitutionally require all applicants to take the [Bar] examination, the Commerce Clause is not offended by a rule which permits some, but not all, out of state attorneys to be admitted on waiver of the examination."

Plaintiff also contends that Ill. Rev. Stat. ch. 13, § 12 is transgressed by Rule 705.[3] The Plaintiff fails to mention, however, that the Illinois courts have construed § 12. In *Lozoff v. Shore Heights Ltd.,* 35 Ill. App.3d 697 (2d Dist. 1976), the Court held that § 12 only allowed a foreign attorney, in the discretion of the Court, to appear in the courts of Illinois on the specific case for which he was presently employed. In other words, the Illinois courts have construed § 12 as a *pro hac vice* rule. The *Lozoff* case was affirmed by the Illinois Supreme Court. 6 Ill. Dec. 225 (1977).

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[3] Ill. Rev. Stat. ch. 13, § 12, states:

> When any counselor or attorney at law, residing in any other state or territory, may desire to practice law in this State, such counselor or attorney shall be allowed to practice in the several courts in this state upon the same terms and in the same manner that counselors and attorneys at law residing in this state now are or hereafter may be admitted to practice law in such other state or territory.

For the reasons stated, the prior order entered in this case is reconsidered and set aside, and Plaintiff's motion for summary judgment is denied and Defendants' motion for summary judgment is granted.

SO ORDERED.

Enter this 6th day of July, 1984.

J. Waldo Ackerman
Chief U.S. District Judge

Plaintiff states that the Supreme Court Rules of the Supreme Court of Missouri premit an Illinois resident who resides in a county bordering Missouri to obtain a Missouri license by qualification on a foreign license. Accordingly, because Plaintiff resides in a county bordering Illinois, he believes section 12 permits him to obtain an Illinois license by qualification on his Missouri license.

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-2298

ANTHONY J. SESTRIC,

Plaintiff-Appellant,

v.

WILLIAM G. CLARK, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of Illinois, Springfield Division.
No. 83 C 3134—J. Waldo Ackerman, *Judge.*

ARGUED FEBRUARY 28, 1985—DECIDED JUNE 18, 1985

Before CUMMINGS, *Chief Judge*, and CUDAHY and POSNER, *Circuit Judges.*

POSNER, *Circuit Judge.* The appellant, Anthony Sestric, is a member of the Missouri bar living and practicing law in St. Louis. He brought this suit against the responsible Illinois officials to invalidate, primarily on federal constitutional grounds, the requirement that a nonresident who wants to practice law in Illinois pass the Illinois bar exam. If Sestric became a resident of Illinois, he could be admitted to the Illinois bar on motion, without taking the bar exam. St. Louis is just across the Mississippi River from Illinois, and Sestric would like to practice law in Illinois without moving to Illinois and without taking the Illinois bar exam. Although his complaint was dismissed on the defendants' motion for summary judgment, he does not argue that the factual record is insufficient to resolve the issues he has raised on appeal.

Sestric bases his case on the privileges and immunities clause of Article IV of the Constitution ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"), and also on the better-known commerce and equal protection clauses. (His additional claim, that the refusal to admit him violated Illinois law, clearly has no merit, for the reasons stated by the district judge.) If the privileges and immunities clause could be viewed as a general guaranty against discrimination by states against nonresidents, then it and the commerce clause—viewed not as a grant of power to Congress but as a prohibition against state action inconsistent with free trade among the states (the "negative" or "dormant" commerce clause)—would occupy the same ground, and we would not have to discuss both clauses. As a matter of fact the framers of the Constitution may have intended the privileges and immunities clause to play the role that has come to be associated more with the "negative" commerce clause. See Eule, *Laying the Dormant Commerce Clause to Rest*, 91 Yale L.J. 425, 447-48 (1982). But almost 200 years of judicial interpretation have opened up a wedge between the two clauses. For example, the privileges and immunities clause has been held not to protect corporations. See, e.g., *W.C.M. Window Co. v. Bernardi*, 730 F.2d 486, 492-93 (7th Cir. 1984). A more pertinent example is that it has been held not to protect the full range of activities in which nonresidents might engage. See, e.g., *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371, 388 (1978) (elk hunting by nonresidents of Montana). So we shall have to address the plaintiff's commerce clause contentions separately (though briefly), and also his equal protection contentions; but we shall begin with privileges and immunities.

Illinois does not require that members of its bar be residents of the state—a requirement that the U.S. Supreme Court held, after argument in this case, violates the privileges and immunities clause. See *Supreme Court of New Hampshire v. Piper*, 105 S. Ct. 1272 (1985). A nonresident can get admitted to the Illinois bar by pas-

sing the Illinois bar exam and satisfying the usual ethical requirements. Nonresidents more than six years out of law school, like the plaintiff, used to be denied this right; but that exclusion, the focus of the plaintiff's challenge in the district court, was rescinded while the appeal in this case was pending. See Rule 703 of the Illinois Supreme Court (Sept. 14, 1984). Though it was not till his reply brief in this court that Sestric redirected his attack to the requirement that he sit for the bar exam, the rule change that ended the exclusion of nonresident lawyers who were more than six years out of law school came after he filed his brief; so we shall not penalize him for his belated change of theories; nor do the defendants ask us to do so. We could remand the case to the district court to consider the new theory before we do, but since it raises only pure issues of law and the district judge who decided the case has died, the delays involved in a remand would not be justified.

If Sestric moved to Illinois he would be excused from having to take the Illinois bar exam, provided he had practiced continuously for five of the last seven years in a jurisdiction to whose bar he had been admitted, Ill. S. Ct. R. 705, as Sestric has (we shall call this the "continuous practice" requirement). Therefore he is treated less favorably than a class of (new) Illinois residents. This difference is the basis of Sestric's present claim under the privileges and immunities clause. Whether such a difference violates the clause, or any other provision of the Constitution, is one of first impression at the federal appellate level, although the Massachusetts Supreme Court has held a similar regulation to be in violation of the clause. *In re Jadd*, 391 Mass. 227, 236-37, 461 N.E.2d 760, 765-66 (1984). Several decisions, one by this court, uphold the constitutionality of continuous-practice requirements. See *Lowrie v. Goldenhersh*, 716 F.2d 401 (7th Cir. 1983); *Salibra v. Supreme Court of Ohio*, 730 F.2d 1059, 1062-64 (6th Cir. 1984); *Shapiro v. Cooke*, 552 F. Supp. 581 (N.D.N.Y. 1982), aff'd on the district court's opinion, 702 F.2d 46 (2d Cir. 1983) (per curiam). And *Hawkins v. Moss*, 503 F.2d 1171 (4th Cir. 1974), upholds the denial of

the continuous-practice exemption to a lawyer whose state of licensing does not reciprocate the exemption. Although none of these cases is directly in point, since the plaintiffs were residents complaining about a requirement that Sestric (a nonresident) satisfies, all contain dicta which cast doubt on the validity of Sestric's claim. For example, we said in *Lowrie* that "there is no residency requirement preventing Lowrie from taking the Illinois bar examination in the first instance. The years of practice and residency requirement at issue in this case prevent Lowrie from being admitted to the Illinois bar *without examination*. It is primarily for this reason, as well as on the ground that we are unable to, as amicus curiae does, ascribe to the Illinois Supreme Court a motive of discouraging out-of-state lawyers from migrating to Illinois, that we find the [amicus's] Privileges and Immunities Clause contentions devoid of merit." 716 F.2d at 414 (emphasis in original). See also 730 F.2d at 1063, 1065; 503 F.2d at 1176-80; 552 F. Supp. at 587-88. *Lowrie* also suggests, it is true, that the practice of law is not one of the privileges protected by the privileges and immunities clause, see 716 F.2d at 414—a proposition that, after *Piper*, can no longer be maintained. See 105 S. Ct. at 1277. But as the passage quoted above makes clear, this was not our primary ground for rejecting Lowrie's privileges and immunities claim.

In any event, *Piper*, though it is, as we shall see, distinguishable from this case, requires us to take a fresh look at the issue, and not just rest on dicta in lower-court decisions, our own or others'. The Supreme Court stated in *Piper* that discrimination against a nonresident who wants to practice law violates the privileges and immunities clause unless "(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective. In deciding whether the discrimination bears a close or substantial relationship to the State's objective, the Court has considered the availability of less restrictive means." *Id.* at 1279 (citation

and footnote omitted). This is a tough test to pass, but before applying it to the "discrimination" of which Sestric complains we must ask whether the Supreme Court intended the test to apply to such a claim. Sestric's claim is different from Piper's. It is not clear that Sestric has been deprived of a privilege or an immunity within the meaning of the clause or that he is the victim of a discrimination in favor of residents and against nonresidents—or indeed that there is any discrimination between any two groups. Thus he may not even have a prima facie claim under the privileges and immunities clause, or he may have a claim more easily rebutted than Piper's.

In the usual privileges and immunities case a state conditions a substantial opportunity or "privilege"—such as, in *Piper* itself, the practice of law—on the status of being a resident of the state. Thus in our *Bernardi* case, or in *Hicklin v. Orbeck*, 437 U.S. 518 (1978) (the "Alaska Hire" case), only residents could be hired to work on certain projects in the state unless there were no residents qualified to do the work. Illinois does nothing like that regarding the practice of law. Although it requires nonresidents to take a bar exam, it requires the same of all residents except new residents who have practiced law continuously for five of the last seven years in a state in which they are licensed. The privilege that Sestric has been deprived of is not the privilege of practicing law in Illinois; nonresidents can practice law in Illinois provided that, like (most) residents, they pass the bar exam. He has been deprived of the "privilege" that some new residents have of being allowed to practice law without taking the bar exam. Maybe the case is really closer to *Baldwin v. Montana Fish & Game Comm'n*, *supra*, than to *Piper*— at least at a deeper level of analysis than one that notes that *Baldwin* is about hunting and *Piper* about lawyering.

Put differently, if practical exclusion from a socially marginal activity such as hunting elk is not within the scope of the privileges and immunities clause (the

nonresident license fee was as much as 25 times higher than the resident license fee, see 436 U.S. at 374), maybe neither is the inconveniencing, as distinct from exclusion, of a nonresident seeking to engage in a vital calling such as law. Granted, the exclusion need not be absolute to be actionable under the privileges and immunities clause, though it was in *Piper*. A prohibitive condition, such as the nonresident license fee in *Toomer v. Witsell*, 334 U.S. 385, 395 (1948), that was 100 times the resident license fee, will do. See also *Ward v. Maryland*, 79 U.S. (12 Wall.) 418 (1871), where, as in *Baldwin*, the maximum difference was 25 times. In *Bernardi* and *Hicklin* nonresidents were eligible for the jobs in question provided there were no qualified residents. But in all these cases the tendency was to exclude most nonresidents. It is a matter of conjecture whether the requirement of taking and passing a bar exam would actually exclude many lawyers having a serious desire to conduct a substantial practice in Illinois; and the exclusion of those having no such desire would not do much damage to the policy of the privileges and immunities clause.

The other respect in which this case breaks the mold of previous privileges and immunities cases is that it does not involve a clear-cut preference for residents, most of whom of course have to take the bar exam too; it is a preference for new residents over both old residents and nonresidents. As a matter of fact, the elimination of the preference of which Sestric complains could harm new residents without helping nonresidents. This can be seen by imagining that Illinois bowed to Sestric's view of his rights under the privileges and immunities clause by requiring everyone—old resident, new resident, nonresident—wanting to practice law in Illinois to take the bar exam. As of course it could do: "Our holding in this case does not interfere with the ability of the states to regulate their bars. The nonresident who seeks to join a bar, unlike the *pro hac vice* applicant, must have the same professional and personal qualifications required of resident lawyers." *Supreme Court of New Hampshire v. Piper*,

supra, 105 S. Ct. at 1278 n. 16. See also *In re Gordon*, 48 N.Y.2d 266, 273, 397 N.E.2d 1309, 1313 (1979). Few states want to admit to their bars every lawyer admitted in one of the other 49 states. To avoid this a state need only, under Sestric's view of privileges and immunities, require every lawyer who wants to practice in the state to take the state's bar exam. Such a rule would bear harder on nonresidents as a class than the rule that Sestric challenges, by making it more costly for them to become residents. Though clearly constitutional, such a rule would not help Sestric or any other nonresident; it would just hurt recent nonresidents (= new residents).

This suggests that there is something amiss with Sestric's claim. And, indeed, even at the purely verbal level of constitutional interpretation a nonresident's complaint about a burden (taking the bar exam) that also rests on many residents (all but new residents) does not fit the privileges and immunities clause comfortably. The clause speaks of the privileges and immunities "of Citizens in the several States," and in this case it may be asked: which citizens of Illinois—old ones or new ones—provide the measure of Sestric's rights? There is also a substantial argument of policy. If (unlike the present case) the State of Illinois, while allowing nonresidents to practice law if they passed the bar exam, allowed any resident to practice law without having to pass the bar exam, it would be discriminating in favor of residents and against nonresidents. There would be a suspicion that the discrimination was unjustified—a needless though far from insurmountable obstacle to interstate mobility of lawyers—because the burden would be borne by nonresidents, who have no voice in the public policy of the state. Cf. *Toomer v. Witsell*, *supra*, 334 U.S. at 396. (True, residents would be diffusely hurt as consumers of legal services; but no resident lawyer would be hurt.) But the State of Illinois does not excuse all or even most residents from having to pass the bar exam in order to practice law in Illinois. It requires all old residents, some new residents (those who do not satisfy the continuous-practice requirement), and

nonresidents alike to pass the bar. The fact that the same burden is placed on both resident and nonresident groups provides some assurance that it is a moderate and reasonable, rather than arbitrary and prohibitive, burden. In the battle of the footnotes between the majority and dissenting opinions in *United Building & Construction Trades Council v. Mayor & Council of City of Camden*, 104 S. Ct. 1020 (1984), a case nominally involving a discriminatory city ordinance rather than a state law, it was common ground that the effect on state residents of an alleged discrimination against nonresidents was relevant to evaluating the privileges and immunities claim. Compare *id.* at 1027 n. 9 (majority opinion) with *id.* at 1034-35 and n. 12 (dissenting opinion).

Discrimination against new residents has been a frequent target of constitutional attack; one has only to recall *Shapiro v. Thompson*, 394 U.S. 618 (1969), where the Supreme Court held that states could not deny welfare benefits to new residents. If as in this case a state favors new residents, there is a presumption that what it is doing is proper. "[A] State may make residence within its boundaries more attractive by offering direct benefits to its citizens in the form of public services, lower taxes than other States offer, or direct distributions of its munificence. Through these means, one State may attract citizens of other States to join the numbers of its citizenry. That is a healthy form of rivalry . . . ." *Zobel v. Williams*, 457 U.S. 55, 67-68 (1982) (concurring opinion). Although this was said in an equal protection case, we cannot think why the same thing should not be true in a privileges and immunities case as well. (*Zobel* has additional significance for this case: it held that preferring old over new residents was not forbidden by the privileges and immunities clause. See *id.* at 59 n. 5. Here Illinois has preferred a class of new residents over both old residents and nonresidents.) Moreover, by allowing lawyers who move to Illinois to be admitted to the Illinois bar without taking the bar exam only if other states accord the same privilege to Illinois lawyers who move to other states (the practice

known as "reciprocity," on which see, e.g., Ill. S. Ct. R. 705(b); *Hawkins v. Moss, supra; Ricci v. State Bd. of Law Examiners*, 427 F. Supp. 611, 618 (E.D. Pa. 1977), vacated on other grounds, 569 F.2d 782 (3d Cir. 1978) (per curiam)), Illinois eases the flow not only of new lawyers into Illinois but also of Illinois lawyers into other states. The rule that Sestric challenges promotes interstate mobility, at least when defined to include the relocation of citizens to new states as well as the provision of goods and services by nonresidents.

Not only has Illinois not denied a privilege to nonresidents that is generally available to residents, but it may not have imposed a net burden on nonresidents even compared to the favored resident group—the new residents. The Florida lawyer (say) who by moving to Illinois can be admitted to the Illinois bar without having to take the Illinois bar exam would probably be giving up his Florida practice. He would not have to give it up, but even today most lawyers have a local rather than multistate practice, and therefore most lawyers who change states abandon their former practice. If he had remained in Florida and sought admission to the Illinois bar as a nonresident, he would have to take the bar exam, but on the other hand he would be retaining his Florida practice; he would not stay in Florida if he wanted to practice law full-time in Illinois. Thus, though he would have taken (so far in his professional lifetime) two bar exams, he would have done so in order to practice in two states, not in one state as in our first example. Sestric does not propose to give up his Missouri practice for an Illinois practice. He wants to practice in both states though he has passed only one bar. If allowed to do this he will be better off than a lawyer who pulls up stakes in Missouri and relocates to Illinois. Of course if that lawyer retains his Missouri practice, as he could do since he would still be a member of the Missouri bar, his position would be symmetrical with what Sestric is seeking for himself. But as is usually the case in law, we are dealing with probabilities rather than certainties. A person who moves to another state is

unlikely to have a multistate practice, while a person who applies for admission to a state's bar as a nonresident must be seeking to have at least a two-state practice. It is not obviously unreasonable to make him take a second bar exam.

Because Illinois has not barred nonresidents from practicing law, has not discriminated against residents in gross, and may not even have imposed a net burden on nonresidents compared to the small class of favored residents, Sestric has failed to make out a prima facie case under the privileges and immunities clause. But since we shall have to consider Illinois' justification for the challenged rule under the equal protection clause, we shall (after doing so) return to the issue of privileges and immunities and show that, even if we are wrong and Sestric has made out a prima facie case under the privileges and immunities clause, Illinois has rebutted it.

As we cannot say that Illinois' rule is more likely to impede than to increase the interstate mobility of lawyers, it is apparent that Illinois has not violated the commerce clause. A state may not place unreasonable burdens on free trade among the states; and among the markets that the states must not attempt to balkanize through tariffs or regulation are labor markets, see, e.g., *W.C.M. Window Co. v. Bernardi*, *supra*, 730 F.2d at 493-96, including the market for legal services. But, as we have seen, far from having placed an unreasonable burden on the interstate mobility of lawyers, Illinois may well have increased that mobility.

It is true that explicitly reciprocal trade barriers have been knocked down under the commerce clause, see, e.g., *A & P Tea Co. v. Cottrell*, 424 U.S. 366, 378-79 (1976); they are in effect retaliatory tariffs. But despite the reciprocity provision in Illinois Supreme Court Rule 705(b), Illinois has not created a barrier to nonresident lawyers and then offered to remove it if other states do likewise. The bar exam is a condition for admission to the bar imposed on residents and nonresidents alike; the waiving of the condition for a class of new residents merely makes it easier for lawyers to change states.

The plaintiff's real objection, as it seems to us, is not that the Illinois rule keeps him, as a nonresident, from practicing law in Illinois but that it creates an arbitrary distinction between experienced nonresidents and equally experienced new residents by excusing the latter from the bar exam required of the former. This is a claim most naturally assessed under the equal protection clause of the Fourteenth Amendment. One response, already suggested, is that there is no discrimination—no (net) difference of treatment between persons similarly situated. But if there is, it is a rational discrimination, and that is all the justification that the equal protection clause requires for such a distinction. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957); *Lowrie v. Goldenhersh*, *supra*, 716 F.2d at 408-09; *Shapiro v. Cooke*, *supra*, 552 F. Supp. at 586.

The plaintiff is claiming a right to practice law in Illinois without being a resident and without taking a bar exam. There can be no assurance that he knows Illinois law well enough to represent clients in Illinois competently. Although there might seem to be no greater assurance regarding lawyers who move to Illinois and are admitted without having to take a bar exam, they at least are making a greater commitment to the state. By becoming residents of Illinois they place themselves in a situation where in all likelihood the bulk of their clients will be Illinois clients; the bulk of the law they practice will be Illinois law; and they will learn through doing. (Of course this is not so in every case; some Illinois lawyers, especially in the large firms in Chicago, have a federal or multistate rather than Illinois practice.) A nonresident who practices law in Illinois might do so on a most intermittent basis. He has not made the commitment entailed in becoming a resident. The focus of his practice being elsewhere, his incentive to master Illinois law is less than that of a resident who expects to practice Illinois law full time. Taking and passing the bar exam is thus a substitute commitment for residence; it forces the nonresident to bone up on Illinois law. And it is a far less

burdensome commitment than moving into the state. To make a person change his state of residence to demonstrate that he is serious about practicing the state's law is, the Supreme Court held in *Piper*, too burdensome. But Sestric is complaining not about the burdens of the bar exam but about what he contends is the unfair advantage that new residents have over him in being excused from having to take the bar; and they are excused only because they have borne the much greater burden of relocating their home and (in all likelihood) their practice to a new state.

Of course one can find—and readily, too—holes in Illinois' defense to the charge of undue favoritism to new residents:

1. It has long been argued that bar exams test skill in "cramming," rather than knowledge of state law, and that by never reexamining those who are admitted to the bar a state gives no protection against the loss of legal skills through disuse or forgetting. But this argument is too powerful. It is an argument against ever making the bar exam a condition of admission to the bar. The universality of the requirement makes this a dubious argument. (In contrast, in *Piper* the Supreme Court pointed out that a number of states—including, of course, Illinois—had stopped requiring residence as a condition of admission to the bar. See 105 S. Ct. at 1275 n. 5.) So does the fact that the courts have upheld the requirement against repeated contentions that it unreasonably discriminates against the members of some minority groups or deprives persons of their liberty of occupation without due process of law. See, e.g., *Poats v. Givan*, 651 F.2d 495 (7th Cir. 1981) (per curiam); *Whitfield v. Illinois Bd. of Law Examiners*, 504 F.2d 474, 477 (7th Cir. 1974) (per curiam); *Attwell v. Nichols*, 608 F.2d 228, 230 (5th Cir. 1979) (per curiam); *Tyler v. Vickery*, 517 F.2d 1089, 1101-03 (5th Cir. 1975).

2. A lawyer might move to Illinois, become a member of the Illinois bar without taking the bar exam, and a few weeks later leave Illinois, so that although he would

remain a member of the Illinois bar his situation would be realistically the same as that of a nonresident lawyer. But such cases are rare. Although the word "resident" is a chameleon, see, e.g., *Lister v. Hoover*, 655 F.2d 123, 128 (7th Cir. 1981) (per curiam), the usual meaning in Illinois law as in other states' law is "domiciliary." See *Fagiano v. Police Bd. of City of Chicago*, 98 Ill. 2d 277, 456 N.E.2d 27 (1983). And although the word is not defined in Rule 705, subsection (d) does require that the applicant be an "actual resident," the same as the ordinance in *Fagiano*, and that he certify "that upon admission to the bar he will actively and continuously engage in the practice of law in" Illinois. So we may take it that for purposes of the rule "residence" implies an intent to remain indefinitely. See also *Hicklin v. Orbeck*, *supra*, 437 U.S. at 522 n. 5. Indefinite is not permanent; but if the lawyer left the state after a few years rather than a few weeks, he would have as good a grounding in Illinois law as a nonresident who had taken the bar exam. In any event, we do not think Illinois' justification must fail merely because we can imagine cases to which it would be inapplicable. Although *Piper* pointed out that New Hampshire's residence requirement was "underinclusive . . . because it permits lawyers who move away from the State to retain their membership in the bar," 105 S. Ct. at 1279, and the Illinois rule is similarly underinclusive, we do not read *Piper* to hold that underinclusiveness is a fatal weakness of a rule (which was not before the Court) that does not forbid nonresidents to practice law but merely requires them, like old residents, to take the bar exam. And an underinclusive rule is not necessarily unreasonable, which is the test under the equal protection clause.

3. There are alternative methods to the bar exam for assuring that nonresidents know enough local law to practice competently, such as "a continuing practice requirement measured by a minimum volume of local work per year," "mandatory continuing legal education for all licensed attorneys," and "periodic reexamination of all admitted attorneys for general competency or for certification in areas of specialty." Hafter, *Toward the Multistate*

Practice of Law Through Admission by Reciprocity, 53 Miss. L.J. 1, 41 (1983) (footnotes omitted). No doubt a stiff fee would winnow out the fly-by-nighters. The problem is that any of these alternatives could easily be more burdensome, more exclusionary, than the bar exam; it all depends on the specifics. See, e.g., Brakel & Loh, *Regulating the Multistate Practice of Law*, 50 Wash. L. Rev. 699, 712 (1975). We thus are not sure that there is a less restrictive alternative to the bar exam, or at least that the courts can determine its existence reliably.

4. The economic analysis of professional licensure in general, see, e.g., Friedman, Capitalism and Freedom 137-60 (1962); Stigler, *The Theory of Economic Regulation*, 2 Bell J. Econ. & Management Sci. 3, 13-17 (1971); Occupational Licensure and Regulation (Rottenberg ed. 1980); Shepard, *Licensing Restrictions and the Cost of Dental Care*, 21 J. Law & Econ. 187 (1978), and of the licensing of lawyers in particular, see, e.g., Pashigian, *Occupational Licensing and the Interstate Mobility of Professionals*, 22 J. Law & Econ. 1 (1979), teaches that the licensing of lawyers is an anachronism, or worse; that a free market in legal services will yield the optimal quality at the optimal price; and that a bar exam, administered once in a lawyer's lifetime, gives no assurance of minimum quality over the lawyer's professional lifetime—and indeed has no other purpose than to limit the number of lawyers and hence keep the prices of their services up. One who is persuaded of these theses will doubt that Illinois should be allowed to make anyone take a bar exam—even a lawyer from Hawaii who has one piece of business in Illinois every decade but wants to tell his clients that he is qualified to practice law in every state. Although having to pass a bar exam would indeed discourage such birds of passage, skeptics of lawyer licensing will argue that all that is important (if that—maybe the discipline of the market is enough) is that the lawyer be subject to discipline by the state, as any member of the Illinois bar is no matter where he lives. But we do not think that the equal protection clause ordains in effect a

national bar, whereby admission to one state's bar is admission to every other's unless the other state refuses to admit new residents on the basis of their license in the state where they have practiced continuously for a period of time in the recent past. A majority of states, and the District of Columbia, allow admission of new residents on the basis of practice in another state. See American Bar Ass'n, Comprehensive Guide to Bar Admission Requirements 30-31 (1984) (Chart VIII). If Sestric's claim prevails, these states will have to decide whether to end this privilege or stand willing to admit on motion most lawyers in the country.

The Supreme Court has said that the high costs of information that many clients face in choosing among lawyers and monitoring the performance of the lawyer they have chosen justify the states in regulating the advertising of legal services with an even freer hand than the First Amendment allows government to regulate the advertising of ordinary goods and services. See *Bates v. State Bar of Arizona*, 433 U.S. 350, 383 (1977) ("because the public lacks sophistication concerning legal services, misstatements that might be overlooked or deemed unimportant in other advertising may be found quite inappropriate in legal advertising"); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 460-61 (1978). Thus the states have been held to have a legitimate interest in regulating the quality of legal practice, and it is not an irrational method of regulation to make nonresident lawyers take the state's bar exam—even though they have already taken a bar exam and practiced law in another state—while excusing new residents from having to take it.

This is enough to show that the challenged rule does not deny Sestric the equal protection of the laws, even if (as we have questioned) there was any discrimination; and it is enough to rebut a prima facie case under the privileges and immunities clause, if contrary to our earlier conclusion Sestric has made out a prima facie case. If he has succeeded in showing a "discrimination" within the meaning of that clause, still it is not such a discrimination

as would warrant the application of so stringent a test of legality as that applied in *Piper* to a much starker discrimination in favor of residents. The less serious a discrimination is, the less ought to be required to justify it. See *Toomer v. Witsell*, *supra*, 334 U.S. at 396 ("the inquiry in each case must be concerned with whether such reasons [for the difference in treatment] do exist and whether the *degree* of discrimination bears a close relation to them") (emphasis added and footnote omitted).

Although the cases discuss issues under the privileges and immunities and commerce clauses separately, reflecting the historical divergence in the interpretation of these closely related provisions, we do not find in the cases the expression of a desire to set a higher standard for justifying the identical "discrimination" when it is challenged under the privileges and immunities clause than when it is challenged under the commerce clause. Indeed, when the discrimination is within the scope of both clauses, the courts typically cite decisions under either interchangeably. See, e.g., *Hicklin v. Orbeck*, *supra*, 437 U.S. at 532-34. In deciding a case under the commerce clause, the court examines both the gravity of the interference with free interstate trade and the justifications offered for it, to see whether the burden is an unreasonable one in the circumstances. Naturally if the state law is obviously protectionist it is struck down without much hesitation—the gap between interference and justification is widest. If the regulation is apparently even-handed, it is struck down only if "the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); see also *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471-72 (1981). Here we have something intermediate—a regulation not totally even-handed, because it singles out a group of new residents for favored treatment, but certainly not nakedly protectionist.

Where, as in *Piper* (had it been brought as a commerce clause case), the interference with free trade consists of totally barring nonresidents from a trade or

calling, the burden of justification is great. Where the interference is small and maybe nonexistent (we said earlier that the Illinois rules actually increase the interstate mobility of lawyers, but here we are concerned with the standard of justification—if justification were necessary), a lighter burden of justification is appropriate. This is so whether the challenge is cast in privileges and immunities terms or in commerce clause terms. The two clauses are part of the same document, drafted by very intelligent and careful men; why would they have wanted the same discrimination against nonresidents to be tested by a different standard, depending on which clause was cited in the complaint? We do not read *Piper* to create such a distinction. The rigorous test of justification that it lays down is designed for cases where a trade or calling is confined to residents, and that is not this case.

But if all this is wrong we still think Sestric must lose, because Illinois' rule passes even the test in *Piper*. The requirement of taking and passing the bar exam must be regarded, in light of its universality, as having a "close or substantial" relationship to a state's legitimate objective of keeping up the quality of its bar. While alternative methods of keeping up that quality can easily be imagined, it is not clear, as we have said, that they would be any less restrictive than the bar exam. Constant judicial policing might be necessary to ensure that they were less restrictive. We might see the emergence of a judge-made counterpart to the Equal Employment Opportunity Commission's guidelines for tests and other methods of selecting employees. See 29 C.F.R. Part 1607. The biggest shadow cast on Illinois' rule is that it excuses new residents from taking the bar. How important to the quality of legal practice can the requirement of taking and passing the bar be if new residents are excused? But as we noted, the act of pulling up stakes in one state and relocating to another establishes a commitment to the new state—a commitment to learning its law and practicing that law competently—that is missing when a nonresident seeks admission to the bar of the state.

As the last point suggests, Sestric's appeal is a challenge to the widespread practice of bar reciprocity, which typically favors (though perhaps superficially, as we have seen) new residents over nonresidents. The alternatives to reciprocity are a national bar or no reciprocity at all. The former might be superior to the system we have in this country for regulating the bar. But it is not even clear that reversing the district court would bring us closer to the national bar, rather than just destroy reciprocity. And if it would do the former, still not every good thing is constitutionally required; we think this particular good thing (if it is a good thing) is not.

AFFIRMED.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

August 1, 1985

Before

Hon. Walter J. Cummings, Chief Judge

Hon. Richard D. Cudahy, Circuit Judge

Hon. Richard A. Posner, Circuit judge

Appeal from the United
States District Court
for the Central District
of Illinois, Springfield
Division.

No. 83 C 3134

J. Waldo Ackerman, *Judge.*

No. 84-2298

Anthony J. Sestric,
Plaintiff-Appellant,

v.

William G. Clark, et al.,
Defendants-Appellees.

ORDER

On June 28, 1985, plaintiff-appellant filed a petition for rehearing with suggestion for rehearing *en banc.* All of the judges on the original panel have voted to deny the petition, and none of the active members of the court has requested a vote on the suggestion for rehearing *en banc.* The petition is therefore DENIED.

The slip opinion issued on June 18, 1985, p. 3, lines 12 and 13, is amended to read:

> his brief; so he is not subject to criticism for having changed his theory when he did.